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Administrator of National Banks

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Comptroller — Robert L. Clarke

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Background

The Office of the Comptroller of the Currency (OCC) was established in 1863 as a bureau of the Department of the Treasury. The OCC is headed by the Comptroller who is appointed by the President, with the advice and consent of the Senate, for a 5-year term.

The OCC regulates national banks by its power to:

- Approve or deny applications for new charters, branches, capital or other changes in corporate or banking structure;
- Examine the banks;
- Take supervisory actions against banks which do not conform to laws and regulations or which otherwise engage in unsound banking practices, including removal of officers, negotiation of agreements to change existing banking practices and issuance of cease and desist orders; and
- Issue rules and regulations concerning banking practices and governing bank lending and investment practices and corporate structure.

The OCC divides the United States into six geographical districts, with each headed by a Deputy Comptroller.

The OCC is funded through assessments on the assets of national banks.

The Comptroller

Robert Logan Clarke became the 26th Comptroller of the Currency on December 10, 1985.

By statute, the Comptroller serves a concurrent term as a Director of the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the Neighborhood Reinvestment Corporation, and as a member of the Federal Financial Institutions Examination Council.

An attorney, Mr. Clarke was formerly with the law firm of Bracewell & Patterson in Houston, Texas. He joined the firm in 1968 and founded its Banking Section in 1972.

Mr. Clarke received a B.A. degree from Rice University in 1963 and an LL.B. degree from Harvard University Law School in 1966. He served as a Captain in the United States Army from 1966 to 1968.

The Quarterly Journal is the journal of record for the most significant actions and policies of the Office of the Comptroller of the Currency. It is published four times a year in March, June, September and December. The *Quarterly Journal* includes policy statements, decisions on banking structure, selected speeches and testimony, material released in the interpretive letter series, statistical data and other information of interest to the administration of national banks. Suggestions, comments or questions about content may be sent to Patricia Eggleston, Senior Writer/Editor, Communications Division, Comptroller of the Currency, Washington, DC 20219. Subscriptions are available for $60 a year by writing to Publications—QJ, Comptroller of the Currency, Washington, DC 20219.

Quarterly Journal

Office of the Comptroller of the Currency

Robert L. Clarke

Comptroller of the Currency

The Administrator of National Banks

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Operations of National Banks

An analysis of the preliminary third quarter 1991 operating results for 3,865 national banks indicates that reported aggregate net income for national banks for the first three quarters of 1991 was down 6 percent from the same period in 1990, largely due to weak earnings in the largest banks. Despite lower earnings, national banks managed to build their capital levels in the third quarter. However, total assets of national banks increased by only 0.6 percent from the end of the third quarter of 1990

National banks reported $1.98 billion in earnings during the third quarter, about the same as in the second quarter but down from the $3.04 billion reported in the first quarter. The annualized rate of return on assets (ROA) for the first nine months was 0.47 percent, down from 0.51 percent during the same period in 1990 and the lowest for that period since 1987, when earnings were negative.

Earnings Decline for Large Banks but Increase for Small Banks

The decline in net income was concentrated in the largest banks. Third quarter earnings at national banks with more than $10 billion in total assets were $.09 billion, compared to $.92 billion in the second quarter and $.82 billion in the first quarter. Their reported profits of $1.83 billion in the first three quarters of 1991 represents a 24 percent decrease from earnings during the first nine months of 1990. Their ROA dropped to 0.26 percent from 0.36 for the same period a year ago.

For the largest national banks, the decline in net income was due primarily to increased provisions for loan losses. Loan loss provisions at those banks for the first three quarters rose from $5.99 billion in 1990 to $8.07 billion in 1991, a 35 percent increase. Third quarter provisions were $3.45 billion, substantially higher than the amounts set aside in either the first or second quarters.

The vast majority of national banks, those with assets less than $300 million, have shown some improvement in earnings in 1991. For the first three quarters of 1991, their aggregate earnings were $1.85 billion, up from the $1.62 billion reported in the same period in 1990 In the third quarter they earned $.52 billion, an amount less than the $.82 billion they earned in the second quarter but about the same as was reported in the first quarter With total assets virtually unchanged from a year ago for banks in this size class, ROA increased to 0.96 percent from 0.86 percent.

Earnings Improve in the Northeast but Deteriorate in the West

The continued sluggishness in aggregate national bank earnings disguises certain anomalies in different regions of the country. National banks located in OCC's Northeastern District, while still the weakest earners, showed some improvement over previous quarters. Those banks reported $.25 billion in earnings in the first three quarters of 1991 compared to losses of $.12 billion for the same period in 1990. That turnaround reflects a slowdown in loan loss provisions, from $4.37 billion in the first three quarters of 1990 to $3.7 billion so far in 1991. The reported improvements in earnings and provisions reflect, in large part, the closing of banks that lost money in 1990, including the Bank of New England and its national bank affiliates, in the first quarter of 1991.

National banks in OCC's Western District reported the largest decrease in earnings in 1991. Western District national banks reported $.76 billion in profits in the first nine months of 1991, down from the $1.27 billion reported for the same period in 1990. Large loan loss provisions contributed to the deterioration in performance: loan loss provisions in the first three quarters in the Western District increased by 79 percent, from $.95 billion in 1990 to $1.70 billion in 1991. While the bulk of the provisions by banks in the Western District to date in 1991 — $.90 billion — occurred in the second quarter, the $.49 billion provision in the third quarter was 50 percent higher than in the same quarter a year ago.

National Bank Capital Increases

Despite weak earnings, national banks managed to build their capital levels. Total equity capital at national banks increased by $1 87 billion in the third quarter, the largest third quarter increase since 1988 and nearly equal to net income for the quarter The average ratio of national banks' equity capital to assets increased to 6.31 percent from 6.05 percent at the end of the third quarter of 1990 All size classes of national banks reported increases in equity

As might be expected during a quarter in which the economy was soft and bank earnings weak national bank holdings of liquid assets increased Holdings of

[illegible] securities, excluding assets held in trading accounts, increased to $[illegible] billion — 12 percent more than the second quarter and 21 percent more than the third quarter of 1990. Holdings of all securities, excluding assets held in the trading accounts, have increased during the quarter by 6 percent, or $20 billion, to $341.3 billion.

Total Assets for National Banks Grew at a Slower Rate

Total assets of national banks increased by only 0.6 percent from the end of the third quarter of 1990. Total loan volume at national banks continued to decline, decreasing by $12.48 billion in the third quarter. The size of that decrease was substantially smaller than the $23.22 billion drop in the second quarter but slightly more than the $7.18 billion decrease in the first quarter.

Real estate loan volume at national banks decreased in the third quarter — a decline not seen in at least five years. Following increases of $1.5 billion in the first quarter and $1.93 billion in the second quarter, national bank real estate loans fell by $4.69 billion in the third quarter. Only the Midwestern and Central districts reported third quarter increases in real estate loans. Most of the decrease — 71 percent — was due to declines in real estate loans outstanding from national banks in the Northeastern District. Despite the decline in real estate lending, national bank investment in real estate activities continues to increase. National bank holdings of mortgage-backed securities and collateralized mortgage obligations increased by $6.0 billion during the quarter to $139.9 billion.

Mark Winer
Banking Research and Statistics

Aggregate Performance Data for National Banks, 1986-1991
(Data through September 30, 1991)

	September 30 1986	*September 30 1987*	*September 30 1988*	*September 30 1989*	*September 30 1990*	*September 30 1991*
Industry Structure						
Number of Banks	4,896	4,681	4,375	4,201	[illegible]	[illegible]
Number of Banks with Losses	1,071	978	731	593	[illegible]	[illegible]
Number of Failed Banks	36	49	68	86	[illegible]	[illegible]
Income Statement ($Billions)						
Year-To-Date						
Net Income	7.23	1.33	9.87	10.30	7.42	6.97
Net Operating Cash Flow	15.58	16.85	16.89	20.16	20.71	20.59
Net Interest Income	41.82	43.48	45.96	49.96	50.10	52.27
Noninterest Income	16.66	18.14	20.31	23.60	25.41	26.33
Noninterest Expense	40.15	42.72	45.01	48.51	51.38	54.50
Loan Loss Provision	10.24	19.06	7.56	10.48	13.52	15.29
Net Loan Loss	7.27	6.74	9.04	8.63	13.59	15.32
Third Quarter						
Net Income	2.81	3.58	5.21	2.00	1.57	1.98
Net Operating Cash Flow	5.25	5.63	6.18	7.02	6.79	6.56
Net Interest Income	14.17	14.86	15.56	16.59	16.89	17.59
Noninterest Income	5.86	6.42	6.72	8.26	8.47	8.22
Noninterest Expense	13.72	14.45	14.59	16.36	17.45	18.31
Loan Loss Provision	3.21	2.21	1.05	5.24	5.27	5.39
Net Loan Loss	2.68	2.30	2.46	2.74	3.81	5.50
Performance Ratios (%)						
Year-To-Date						
Return on Equity	9.90	1.77	12.88	12.38	8.53	7.63
Return on Assets	0.59	0.10	0.74	0.73	0.51	0.47
Net Interest Income to Assets	3.43	3.38	3.44	3.55	3.43	3.55
Loss Provision to Assets	0.84	1.48	0.57	0.74	0.92	1.04
Noninterest Income to Assets	1.37	1.41	1.52	1.68	1.74	1.79
Noninterest Expense to Assets	3.29	3.32	3.37	3.45	3.51	3.70
Real Estate Loans to Loans	28.13	31.43	33.91	36.20	38.71	40.37
Noncurrent Loans to Loans	3.05	3.84	3.57	3.26	3.68	4.29
Noncurrent RE Loans to RE Loans	2.85	3.08	3.33	3.13	4.39	5.59
Loss Reserve to Loans	1.67	2.78	2.74	2.44	2.48	2.64
Loss Reserve to Noncurrent Loans	54.85	72.45	76.83	74.80	67.41	61.46
Net Loan Loss to Loans	0.96	0.83	1.06	0.94	1.43	1.64
Loss Provision to Net Loan Loss	140.85	282.88	83.57	121.47	99.46	99.84
Equity Capital to Assets	6.06	5.81	5.83	5.94	6.05	6.31
Primary Capital to Assets + Reserves	7.26	7.70	7.71	7.64	7.75	8.01

Banking Research and Statistics

Aggregate Condition Data for National Banks, 1986-1991
(Data through September 30, 1991)

	[illegible] 1986	[illegible] 1987	September 30 1988	September 30 1989	September 30 1990	September 30 1991
[illegible]						
[illegible]	[illegible]	[illegible]	1 815 39	1 921 11	1 979 18	1 990 36
[illegible]	[illegible]	[illegible]	1 374 95	1 443 86	1 525 50	1 557 13
[illegible]	[illegible]	[illegible]	1 709 41	1 806 87	1 859 28	1 864 85
[illegible]	[illegible]	[illegible]	307 31	436 27	338 46	347 88
[illegible]	1 041 18	1 098 33	1 171 45	1 255 97	1 286 08	1 240 66
Real Estate Loans	292 89	344 63	397 28	454 64	497 82	500 86
Commercial & Industrial Loans	[illegible]	360 74	369 12	386 74	387 84	356 64
[illegible]	[illegible]	205 30	226 74	242 54	237 74	230 08
Noncurrent Loans	[illegible]	42 11	41 81	41 00	47 35	53 28
Noncurrent Real Estate Loans	8 56	10 65	13 22	14 21	21 88	27 98
Other Real Estate Owned	4 82	6 00	8 12	7 99	12 63	17 07
Restructured Loans	1 21	1 54	1 43	1 38	3 60	5 00
Loan Loss Reserve	17 40	30 51	32 12	30 67	31 92	32 75
Equity Capital	100 80	100 23	105 90	114 16	119 82	125 52
Primary Capital	122 09	135 13	142 51	149 02	155 88	161 95
[illegible] ($ Billions)						
[illegible] Gains (Losses)						
Assets	34 49	14 95	45 47	74 94	3 14	6 47
Loans	39 31	13 88	49 93	61 85	6 09	42 75
Real Estate Loans	29 17	36 [illegible]	39 72	47 02	31 61	-0 94
Loan Loss Reserve	2 97	12 4[illegible]	-0 08	0 85	-0 44	1 37
Noncurrent Loans	3 95	17 29	-0 24	4 94	6 37	1 52
Noncurrent Real Estate Loans	2 18	2 12	2 00	3 61	6 01	2 73
Other Real Estate Owned	0 91	1 03	1 93	1 25	3 41	2 63
Restructured Loans	1 21	0 27	0 03	-0.15	2 25	0 23
Equity Capital	4 67	[illegible]	6 12	6 01	6 18	5 61
Primary Capital	[illegible]	10 80	6 07	6 74	5 70	3 87
Third Quarter Gains (Losses)						
Assets	17 55	13 [illegible]	[illegible]	27 93	-0 86	29 64
Loans	9 46	13 54	1[illegible] 69	36 86	10 80	12 48
Real Estate Loans	11 65	[illegible]	14 36	17 24	7 99	-4 69
Loan Loss Reserve	0 57	[illegible]	[illegible] 12	2 16	1 55	-0 25
Noncurrent Loans	[illegible] 11	[illegible]	1 00	1 95	3 67	-2 88
Noncurrent Real Estate Loans	0 84	[illegible]	[illegible] 65	1 04	2 48	-0 66
Other Real Estate Owned	0 34	[illegible]	[illegible] 78	0 42	1 93	-0 41
Restructured Loans	[illegible]	0 03	[illegible] 03	0 04	0 74	-0 01
Equity Capital	[illegible]	3 [illegible]	3 29	0 50	0 43	1 87
Primary Capital	[illegible]	3 18	3 11	2 53	1 97	1 44

Banking Research & Statistics

Aggregate Performance Data for National Banks by Asset Size

(Data through September 30, 1991)

	Under $300M		*$300-$1B*		*$1B-$10B*		*Over $10B*		[illegible]	
	Sept 30, 1990	*Sept 30 1991*	*Sept 30 1990*	*Sept 30 1991*	*Sept 30 1990*	*Sept 30 1991*	*Sept 30 1990*	*Sept 30 1991*	*Sept 30 1990*	*Sept 30 1991*
Industry Structure										
Number of Banks	3,494	3,345	300	321	179	164	34	[illegible]	[illegible]	[illegible]
Number of Banks with Losses	490	461	32	34	26	28	9	[illegible]	[illegible]	[illegible]
Number of Failed Banks	82	28	3	3	1	2	0	[illegible]	86	3[illegible]
Income Statement ($Billions)										
Year-To-Date										
Net Income	1.58	1.85	0.87	0.83	2.57	2.46	2.40	1.83	7.42	[illegible]
Net Operating Cash Flow	2.39	2.24	1.64	1.78	8.38	7.52	8.29	9.05	[illegible]	[illegible]
Net Interest Income	7.58	7.47	4.55	4.91	17.66	17.29	20.40	22.60	[illegible]	[illegible]
Noninterest Income	1.92	1.96	1.31	1.52	9.00	9.28	13.18	13.57	25.41	26.33
Noninterest Expense	6.44	6.56	3.90	4.31	17.32	17.85	23.73	25.78	51.38	54.50
Loan Loss Provision	0.85	0.80	0.78	1.00	5.90	5.43	5.99	8.07	13.52	15.29
Net Loan Loss	0.65	0.67	0.61	0.80	4.51	4.67	7.83	9.19	13.59	15.32
Third Quarter										
Net Income	0.57	0.52	0.21	0.17	0.62	1.20	0.16	0.09	1.57	1.98
Net Operating Cash Flow	0.82	0.74	0.52	0.59	2.94	2.28	2.51	2.95	6.79	6.56
Net Interest Income	2.50	2.46	1.50	1.63	6.22	5.66	6.67	7.84	16.89	17.59
Noninterest Income	0.65	0.62	0.37	0.47	3.17	2.95	4.27	4.17	8.47	8.22
Noninterest Expense	2.11	2.13	1.28	1.42	6.17	5.95	7.89	8.81	17.45	18.31
Loan Loss Provision	0.26	0.26	0.31	0.45	2.33	1.23	2.37	3.45	5.27	5.39
Net Loan Loss	0.21	0.22	0.21	0.30	1.61	1.32	1.78	3.67	3.81	5.50
Performance Ratios (%)										
Year-To-Date										
Return on Equity	9.87	11.60	11.47	9.62	8.88	8.94	6.97	4.66	8.53	[illegible]
Return on Assets	0.82	0.96	0.80	0.69	0.53	0.55	0.35	0.26	0.51	0.47
Net Interest Income to Assets	3.93	3.86	4.19	4.09	3.67	3.86	3.00	3.18	3.43	3.55
Loss Provision to Assets	0.44	0.41	0.72	0.83	1.23	1.21	0.88	1.14	0.92	1.04
Noninterest Income to Assets	0.99	1.01	1.21	1.27	1.87	2.07	1.94	1.91	1.74	1.79
Noninterest Expense to Assets	3.34	3.39	3.59	3.59	3.60	3.99	3.49	3.63	3.51	3.70
Real Estate Loans to Loans	49.94	52.65	45.57	48.30	37.13	38.50	36.13	37.52	38.71	40.37
Noncurrent Loans to Loans	2.08	2.18	2.25	2.38	3.16	3.59	4.61	5.48	3.68	4.29
Noncurrent RE Loans to RE Loans	1.81	2.06	2.59	2.75	4.53	4.97	5.47	7.63	4.39	5.59
Loss Reserve to Loans	1.68	1.82	1.86	2.00	2.39	2.84	2.82	2.80	2.48	2.64
Loss Reserve to Noncurrent Loans	80.93	83.25	82.72	83.69	75.54	79.10	61.17	51.15	67.41	61.46
Net Loan Loss to Loans	0.60	0.63	0.87	1.07	1.41	1.63	1.73	1.97	1.43	1.64
Loss Provision to Net Loan Loss	130.95	119.82	128.39	125.31	130.82	116.40	76.54	87.78	99.46	99.84
Equity Capital to Assets	8.35	8.29	7.01	7.19	6.23	6.57	5.17	5.48	6.05	6.31
Primary Capital to Assets + Reserves	9.21	9.20	8.14	8.35	7.75	8.25	7.30	7.49	7.75	8.01

Banking Research and Statistics

Aggregate Condition Data for National Banks by Asset Size

(Data through September 30, 1991)

	[illegible]		[illegible]		$1B-$10B		[illegible]		[illegible]	
	Sept 30 1990	Sept 30 1991	Sept 30 1990	Sept 30 1991	Sept 30 1990	Sept 30 1991	Sept 30 1990	Sept 30 1991	Sept 30 1990	Sept 30 1991
[illegible]										
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	462.49	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	144.2[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	209.87	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	47.66	[illegible]	143.54	227.37	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	20.85	115.20	[illegible]	[illegible]	114.37	387.54	356.64
[illegible]	[illegible]	[illegible]	[illegible]	24.08	103.91	[illegible]	79.62	81.76	237.74	230.08
Noncurrent Loans	1.96	[illegible]	[illegible]	2.45	13.14	13.39	29.01	34.47	47.35	[illegible]
Noncurrent Real Estate Loans	[illegible]	1.48	[illegible]	[illegible]	6.08	7.13	12.44	18.00	21.88	27.08
Other Real Estate Owned	1.51	1.58	[illegible]	[illegible]	4.18	[illegible]	[illegible]	8.87	12.63	17.07
Restructured Loans	0.48	0.46	0.15	0.13	0.58	0.49	[illegible]	3.86	3.60	5.00
Loan Loss Reserve	2.40	2.48	1.35	[illegible]	9.93	10.59	17.75	17.63	31.92	32.75
Equity Capital	[illegible]	20.06	10.87	12.04	38.90	38.39	48.85	53.53	119.82	125.52
Primary Capital	[illegible]	23.49	12.77	14.15	49.17	49.86	70.33	74.46	155.88	161.95
[illegible] Changes ($B[illegible])										
[illegible] Gains (Losses)										
Assets	4.91	1.17	9.45	7.60	44.83	16.24	43.43	16.29	3.14	6.47
Loans	1.72	3.56	5.52	1.41	-34.06	-21.64	36.35	-18.95	6.09	-42.75
Real Estate Loans	1.42	1.40	5.21	3.62	6.16	5.33	31.14	-0.63	31.61	-0.94
Loan Loss Reserve	0.01	0.07	0.23	0.18	0.42	0.02	1.08	1.65	0.44	1.37
Noncurrent Loans	0.01	[illegible]	[illegible]	[illegible]	[illegible]	0.74	3.68	1.84	6.37	1.52
Noncurrent Real Estate Loans	[illegible]	[illegible]	[illegible]	[illegible]	1.17	0.79	4.58	3.09	6.01	2.73
Other Real Estate Owned	0.16	[illegible]	0.16	[illegible]	1.16	0.53	2.26	2.03	3.41	2.63
Restructured Loans	0.09	0.00	0.01	[illegible]	0.19	0.10	[illegible]	0.29	2.25	0.23
Equity Capital	0.45	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	4.35	1.96	6.18	5.61
Primary Capital	0.42	[illegible]	1.28	[illegible]	[illegible]	[illegible]	3.51	0.03	5.70	3.87
Third Quarter Gains (Losses)										
Assets	0.93	[illegible]	1.31	[illegible]	15.76	2.47	16.09	31.12	0.86	29.64
Loans	0.26	1.64	0.91	[illegible]	10.67	13.27	0.52	3.23	10.80	12.48
Real Estate Loans	0.56	0.04	0.80	[illegible]	[illegible]	5.03	0.89	0.43	7.99	4.69
Loan Loss Reserve	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	-0.60	0.61	0.23	1.55	-0.25
Noncurrent Loans	0.11	[illegible]	[illegible]	[illegible]	1.73	1.71	1.59	1.28	3.67	-2.88
Noncurrent Real Estate Loans	0.07	[illegible]	0.12	[illegible]	[illegible]	0.88	1.45	0.15	2.48	-0.66
Other Real Estate Owned	[illegible]	[illegible]	0.04	[illegible]	0.86	0.60	1.05	0.24	1.93	0.41
Restructured Loans	[illegible]	[illegible]	[illegible]	[illegible]	0.06	0.03	0.84	0.00	0.74	0.01
Equity Capital	0.14	[illegible]	[illegible]	0.13	[illegible]	0.80	0.68	0.90	0.43	1.87
Primary Capital	0.15	[illegible]	[illegible]	[illegible]	1.83	0.19	0.10	0.97	1.97	1.44

Banking Research & Statistics

Aggregate Performance Data for National Banks by OCC District
(Data through September 30, 1991)

	Northeastern	Southeastern	Central	Midwestern	Southwestern	Western	Multinational*	[illegible]
Industry Structure								
Number of Banks	423	515	778	660	904	[illegible]	[illegible]	[illegible]
Number of Banks with Losses	93	95	36	43	129	[illegible]	[illegible]	[illegible]
Number of Failed Banks	10	3	2	0	19	1	[illegible]	[illegible]
Income Statement ($Billions)								
Year-To-Date								
Net Income	0.25	1.33	1.93	0.86	0.50	0.76	1.34	[illegible]
Net Operating Cash Flow	3.34	2.96	3.41	1.25	1.07	[illegible]	6.18	[illegible]
Net Interest Income	9.30	7.58	8.16	3.19	3.88	6.01	14.16	[illegible]
Noninterest Income	4.49	2.91	3.13	1.41	1.46	2.55	10.37	16.33
Noninterest Expense	10.14	7.13	7.13	3.01	4.04	5.69	17.36	[illegible]
Loan Loss Provision	3.70	1.86	1.56	0.41	0.67	1.70	5.40	15.29
Net Loan Loss	3.31	1.53	1.16	0.39	0.80	1.12	7.01	15.32
Third Quarter								
Net Income	0.18	0.68	0.57	0.31	0.20	0.31	0.26	1.98
Net Operating Cash Flow	1.07	1.00	1.13	0.45	0.37	0.79	1.76	6.56
Net Interest Income	3.16	2.37	2.76	1.10	1.32	2.03	4.85	17.59
Noninterest Income	1.18	0.93	1.11	0.51	0.49	0.89	3.10	8.22
Noninterest Expense	3.18	2.17	2.46	1.04	1.35	1.99	6.12	18.31
Loan Loss Provision	1.11	0.44	0.59	0.15	0.20	0.49	2.40	5.39
Net Loan Loss	1.06	0.46	0.41	0.12	0.22	0.40	2.83	5.50
Performance Ratios (%)								
Year-To-Date								
Return to Equity	1.52	9.86	12.63	14.40	6.94	8.16	5.65	7.63
Return on Assets	0.09	0.67	0.89	0.98	0.44	0.56	0.30	0.47
Net Interest Income to Assets	3.34	3.81	3.76	3.63	3.48	4.44	3.20	[illegible]
Loss Provision to Assets	1.33	0.93	0.72	0.47	0.60	1.25	1.22	1.04
Noninterest Income to Assets	1.61	1.46	1.44	1.61	1.31	1.88	2.35	1.79
Noninterest Expense to Assets	3.64	3.58	3.29	3.43	3.62	4.20	3.93	3.70
Real Estate Loans to Loans	42.46	48.21	37.86	37.27	38.67	45.77	35.87	40.37
Noncurrent Loans to Loans	5.37	2.68	2.40	1.83	3.43	3.82	6.01	4.29
Noncurrent RE Loans to RE Loans	7.12	3.63	2.59	2.00	4.51	4.30	8.56	5.59
Loss Reserve to Loans	3.65	2.07	1.90	1.99	3.08	2.71	2.65	2.64
Loss Reserve to Noncurrent Loans	67.87	77.37	79.36	108.40	89.84	70.96	44.13	61.46
Net Loan Loss to Loans	1.93	1.22	0.86	0.78	1.45	1.18	2.32	1.64
Loss Provision to Net Loan Loss	111.79	121.33	133.87	106.25	83.94	151.27	77.10	99.84
Equity Capital to Assets	6.12	6.76	7.18	7.12	6.53	7.03	5.32	6.31
Primary Capital to Assets + Reserves	8.35	7.99	8.29	8.27	7.91	9.01	7.30	8.01

*Multinational category represents national banks affiliated with seven multinational bank holding companies

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Aggregate Condition Data for National Banks by OCC District

(Data through September 30, 1991)

	Northeastern	Southeastern	Central	Midwestern	Southwestern	Western	Multinational	Total
[illegible]								
[illegible]	[illegible]	[illegible]	[illegible]	117.4[illegible]	[illegible]	[illegible]	[illegible]	1,990.[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	95.[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	157.[illegible]	[illegible]	27[illegible]	109.07	[illegible]	167.[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	16.44	[illegible]	[illegible]	110.9[illegible]	34[illegible].88
[illegible]	[illegible]	176.[illegible]	18[illegible]	66.41	[illegible]	124.66	388.63	1,240.66
Real Estate Loans	[illegible]	[illegible]	69.14	[illegible]4.75	[illegible]	57.06	139.40	[illegible]
[illegible]	[illegible]	[illegible]	[illegible].43	17.54	20.38	32.61	126.57	356.64
[illegible]	40.[illegible]	56.47	40.17	13.51	13.[illegible]	23.[illegible]	62.6[illegible]	230.08
Noncurrent Loans	[illegible]	4.71	4.38	[illegible]	[illegible].46	4.77	23.3[illegible]	53.28
Noncurrent Real Estate Loans	[illegible]	3.08	1.7[illegible]	0.49	1.25	[illegible].45	11.94	27.98
Other Real Estate Owned	4.[illegible]	[illegible]	1.28	0.48	1.96	1.43	5.61	17.07
Restructured Loans	[illegible]	[illegible]	[illegible]	0.15	0.42	0.09	3.25	5.00
Loan Loss Reserve	[illegible].41	[illegible].65	[illegible].47	1.3[illegible]	2.21	3.38	10.31	32.75
Equity Capital	[illegible]	[illegible]	[illegible].06	8.37	9.71	12.69	30.92	125.52
Primary Capital	[illegible]	[illegible]	[illegible].59	9.83	11.93	16.57	43.22	161.95
[illegible]								
Year-To-Date Growth ([illegible])								
Assets	10.29	13.71	4.07	0.15	0.46	[illegible]0.20	[illegible]0.62	6.47
Loans	-18.17	1.38	1.92	0.49	3.65	3.92	20.79	-42.75
Real Estate Loans	1.12	2.80	5.32	1.76	1.16	-0.75	7.78	-0.94
Loan Loss Reserve	[illegible]0.82	0.32	0.45	0.06	0.15	0.62	1.86	1.37
Noncurrent Loans	[illegible]2.33	0.33	[illegible]0.43	[illegible]0.03	-0.30	1.65	1.70	1.52
Noncurrent Real Estate Loans	1.89	[illegible]0.22	[illegible]0.35	0.06	-0.27	1.05	3.21	2.73
Other Real Estate Owned	[illegible]	0.75	0.38	0.11	0.06	0.16	1.06	2.63
Restructured Loans	-0.07	0.05	[illegible]0.01	[illegible]0.03	0.02	-0.10	0.36	0.23
Equity Capital	2.12	1.32	1.13	[illegible]0.68	0.41	0.46	-0.51	5.61
Primary Capital	1.18	1.48	1.58	0.69	0.27	1.08	-2.41	3.87
Third Quarter Gain ([illegible])								
Assets	[illegible]	[illegible].24	4.08	[illegible]	3.28	2.27	13.92	29.64
Loans	9.17	1.05	1.95	0.06	0.60	[illegible]2.33	1.27	12.48
Real Estate Loans	3.35	1.05	[illegible].38	[illegible]0.39	0.50	0.96	1.58	4.69
Loan Loss Reserve	0.08	0.21	[illegible]0.21	[illegible]0.04	0.02	0.09	0.44	-0.25
Noncurrent Loans	3.07	[illegible]	[illegible]0.14	[illegible]0.00	0.08	0.59	0.03	2.88
Noncurrent Real Estate Loans	1.89	[illegible]0.41	[illegible]0.13	[illegible]0.01	0.08	0.52	1.06	0.66
Other Real Estate Owned	-0.74	[illegible]	[illegible]0.07	[illegible]	0.09	0.01	0.20	0.41
Restructured Loans	0.00	[illegible]	[illegible]	[illegible]	0.02	0.01	-0.01	-0.01
Equity Capital	0.60	[illegible]	0.45	[illegible]0.30	0.23	0.22	-0.30	1.87
Primary Capital	0.68	[illegible]	[illegible]0.65	[illegible]0.34	0.21	0.30	-0.76	1.44

Banking Research & Statistics

Recent Corporate Decisions

On August 2, 1991, the OCC denied a new bank charter application because it found the applicants' filed a weak and unsupported operating plan and the management team appeared to be unqualified to operate a national bank. The OCC concluded that the proposed new bank did not have a reasonable likelihood of success in its chosen market.

On August 22, 1991, the OCC denied a proposal to establish a Competitive Equality Banking Act (CEBA) credit card bank. The OCC decided that the unstable financial condition of the proposed parent and the uncertainty of the parent's ability to provide ongoing financial support to the proposed bank warranted disapproval. Additionally, the applicant did not satisfactorily address Community Reinvestment Act (CRA) requirements.

On September 24, 1991, the OCC conditionally approved a capital proposal submitted by Marble Falls National Bank, Marble Falls, Texas. The approval was conditioned upon the stock issuance being classified as preferred stock, rather than a second class of common stock, as proposed by the bank. OCC analysis concluded that features of the proposed issuance were more characteristic of common stock than preferred stock.

Corporate Decisions Related to the Community Reinvestment Act

On July 8, 1991, the OCC conditionally approved a branch application filed by The Union Center National Bank, Union, New Jersey. The OCC considered the applicant's CRA performance less than satisfactory in several areas: determining community credit needs; marketing credit services; monitoring and analyzing the geographic distribution of credit provided by the bank; complying with consumer laws and regulations; and participating in community development programs. The conditional approval requires the bank to achieve satisfactory performance under CRA and to improve its compliance systems. The OCC will conduct a compliance examination to assess the bank's performance and has withheld approval to open the branch until these conditions are met.

On July 18, 1991, the OCC gave The National Bank of Coxsackie, Coxsackie, New York, conditional approval to purchase certain assets and assume certain liabilities of a branch of Key Bank of Eastern New York, N.A. OCC's review concluded that the bank's CRA performance was less than satisfactory in determining community credit needs and marketing credit services available, in offering and extending certain types of credit, in monitoring and analyzing the geographic distribution of credit provided by the bank, in complying with consumer laws and regulations, and in participating in community development programs. Before the acquisition can be completed, the bank must develop a CRA plan which includes a self-assessment test of performance, a program to document CRA efforts, and an evaluation of credit products developed and marketed in response to community credit needs. The bank must also analyze its lending by geographic distribution, report findings to the board of directors, and document its evaluation of community development programs.

On July 18, 1991, the OCC granted Omni Bank, National Association, Monterey Park, California, conditional approval to establish a branch in the Pacific Rim Shopping Center in San Jose, California. A CRA review determined that the applicant's CRA performance was less than satisfactory. Specifically, the OCC found the bank's efforts to ascertain the credit needs of its community, its marketing of credit services available, and its participation in government insured or guaranteed programs for housing, small business, or small farms were less than satisfactory. The bank's community delineation and its lending efforts within that community, and its participation in community development projects and programs were also less than satisfactory. Before the branch is established, the bank's board must have a written plan to achieve a satisfactory level of performance and must submit an accomplishment report and a CRA self-assessment to the OCC. An

This section contains summaries of selected corporate decisions completed during the third quarter of 1991. They are noteworthy because they represent issues of importance or unusual methods of accomplishing a particular expansion activity. Copies of the public sections of the applications may be obtained from the Communications Division of the OCC in Washington, D.C.

The section related to CRA requirements is provided pursuant to Banking Circular 238 dated June 15, 1989. It provides summaries to provide easier access to the OCC's decisions on national bank corporate applications that have been conditionally approved or denied on grounds related to CRA. The decision letters are published monthly in OCC's Interpretations document. Decision letters for non-CRA related decisions are available upon request from the Communications Division.

[illegible] CRA performance evaluation [illegible] describing the [illegible] distribution of credit extensions, applica[illegible] so as to demonstrate a reasonable [illegible] of the bank's local community, will also be required before final approval is granted.

On August [illegible], 1991, the OCC granted preliminary conditional approval of an application to convert [illegible] Federal Savings Bank, Charleston, South Carolina, to a national banking association to be named Citadel National Bank. The OCC asked the savings and loan to design a CRA program which outlined policies, procedures, training and monitoring guidelines and have it approved by the board. The bank must also revise its CRA statement to include a new community delineation, the types of credit to be offered after conversion, and an assessment of the bank's activities under each assessment factor. The bank must also establish procedures to ensure proper documentation of the bank's efforts and procedures for the continued analysis of the geographic distribution of credits and credit denials.

On August 23, 1991, the OCC conditionally approved a CEBA credit card bank entitled ACC National Bank. The bank will be located in West Des Moines, Iowa. The conditional approval required the applicant to revise its CRA statement to designate a "local" community and the proprietary nature of the credit card loans to be offered. These conditions, along with other standard new bank charter conditions, must be met before the bank can open for business.

Cross-county Applications
(as of September 30, 1991)

State	*Received*	*Approved*	*Denied*	*Pending*
Alabama	1	1	0	0
Florida	13	13	0	0
Georgia	1	0	1	0
Iowa	1	0	0	1
Indiana	3	3	0	0
Kansas	6	5	1	0
Louisiana	22	22	0	0
Mississippi	2	2	0	0
Missouri	2	2	0	0
Tennessee	20	20	0	0
Texas	6	6	0	0
Wisconsin	3	3	0	0
TOTALS	80	77	2	1

This chart lists cross-county branch applications filed with the OCC as a result of OCC's decision on July 9, 1985, to allow Deposit Guaranty National Bank, Jackson, Mississippi, to branch to the same extent as state-chartered savings and loans.

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Corporate Activity Division

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Remarks by Robert L. Clarke before the Consumer Bankers Association on reassessing bank supervision, Hot Springs, Virginia, September 23, 1991

A man in Washington recently began to feel poorly, so he went to his doctor to find out why. The doctor ran a series of tests on the patient and told him to come back in three days for the results. The appointed day arrived and the man sat down across the desk from his physician.

The doctor said: "Jim, there is never an easy way to say it so I'm going to come out and say it directly — you have six months to live."

The shock was great — as you might imagine — but after a few minutes the man regained control and asked the inevitable question: "Doctor, is there anything I can do?"

The doctor thought a moment and then replied: "As a matter of fact, yes — you can get appointed Comptroller of the Currency — the official in charge of regulating national banks."

The man asked: "Becoming a bank regulator is going to make me live longer?"

"No," said the doctor, "but it will sure make it seem like it's longer."

I can vouch for that.

Just as you can vouch for the fact that tough times change a person's perspective. Just a couple of weeks ago, a leading Washington real estate developer went to see the president of one of the largest local banks.

"I got some good news and I got some bad news," the real estate developer said.

"What's the bad news?" asked the banker.

"You know that office complex we finished over by the airport?" said the developer.

"Yes," said the banker.

"The tenants broke their leases — no one is moving in. And you know our new shopping mall right outside town?"

The banker said: "Yes."

The developer said: "Only three stores have moved in — and our new hotel downtown?"

The banker said: "Yes."

The developer said: "Well, tourism is so down that there is no use in opening it."

There was silence.

After a few minutes, the banker asked: "What's the good news?"

And the developer replied: "I'm going to keep on banking with you."

Humor often makes a serious point. The truth is the last few years have been difficult ones for bankers and bank regulators.

At times, I believe many of us on both sides have felt a lot like the passengers on an airplane that, some years ago, was flying to Britain when the captain's voice came through the address system and said: "Attention, this is the captain. Those of you on the starboard, or right, side of the aircraft can see that the engines are on fire. That is why the aircraft is losing altitude."

"Those of you on the port, or left, side of the aircraft can clearly see a small, orange dinghy bobbing about on the sea," the captain said. "I am speaking to you from that dinghy."

We — bankers and bank regulators — have been rocked by the turbulence in the economy — and the consequent turmoil in the banking system — over the last several years. We really weren't in the same boat — but one might say we were peering out the same side of the airplane. Once the shock of the view wore off, it was only natural to ask: "Was there anything we could do?"

With some exceptions, the good news was that, yes, there was.

We could get — and keep — the situation under control.

But doing so required a reassessment. A reassessment by bankers of what businesses they wanted to pursue and how they wanted to pursue them. A reassessment by bank regulators of how best to promote the safety and soundness of the banking system.

To a great extent, the bank regulatory issue of the 1990s will be — indeed, it has already proven to be — how

best [illegible] that the [illegible] of the 1980s don't [illegible]. [illegible] the OCC do to prevent these problems from [illegible] again — or, at the very [illegible], what [illegible] we do to reduce problems to the lowest possible [illegible]?

We began our reassessment more than three years ago — when we surveyed the damage wrought by the banking crisis in Texas.

Where we've headed since then offers the best guide to where we are going in the future.

In our reassessment — and the actions we have taken that were prompted by it — you can see the future course of bank regulation appearing like the outlines of a developing photograph.

To understand our reassessment and the actions arising from it, it is necessary first to consider banking and its environment in the 1980s, and how a number of elements came together. The economy — for the most part — was expanding. Employment grew. Much of this expansion happened in the service sector. This created an impetus for building office space and other retail space. Lenders of all types — banks, insurance companies, savings and loans, pension funds — jumped in to lend. The result was that too much was built too quickly — by one estimate, 48 percent of all commercial real estate in the United States was built in the 1980s. Even good projects were endangered by this overbuilding — and a huge buildup of debt occurred across the board.

In 1987, we at the OCC began to see troubling conditions in some real estate markets outside Texas and took a close look at the condition of real estate loans at banks.

The OCC's concern over the high level of national bank investment in real estate became public in 1988 — after we conducted special examinations in a group of large regional banks with big real estate exposures. I delivered a speech discussing those concerns in detail — a copy of that speech was sent to every CEO of every national bank in the United States. That speech was followed by more real estate exams at larger banks. And these were followed by stepped up annual asset quality exams at all large banks.

The purpose of these examinations was simple and clear: [illegible] to make a realistic assessment of the [illegible] — and to take these [illegible].

[illegible]

of $1 billion — banks which together account for 80 percent of the assets in the national banking system — and all problem banks. We did the same thing last year. And we are assessing the condition and meeting with the boards of directors of all national banking companies, big and small institutions alike, annually.

It was understandable that our efforts brought howls and protests from some bankers and some customers who were faced with making reassessments of their own. As we all saw in the Southwest and farm belt experiences earlier, such reaction is inevitable when economic prosperity comes to an end. I've talked to bankers and borrowers who were affected. I know how they feel. I know it is never easy.

At the same time, however, I was taken aback by a number of charges that were leveled at the OCC in general and at me personally. In spirit, the vicious charges leveled at the OCC and me reminded me of the exchange between two rival authors who met on the street by accident one day. One had just published a book.

Said the other: "I thought your book was great — tell me, who wrote it for you?"

The author replied: "I'm so glad you enjoyed it — now tell me, who read it to you?"

The criticism that we've received for being too tough has been exceeded only by the criticism that we've been too lax.

In that regard, I must mention one other factor that played a role in the story of banking in the 1980s. The deposit run at Continental Illinois in 1984 showed just how large a systemic risk the possible failure of a large bank posed. The Continental experience also showed conclusively that the failure of a large bank could cause serious problems in many small banks through the loss of their correspondent balances.

In response to that experience, the OCC in 1984 and 1985 developed a supervisory process that would focus our resources on the largest institutions in the national banking system and on those other areas of risk throughout the national banking system that represented the greatest exposure.

We focused on the large banks because that was where a lot of the systemic risk was. And that is where a lot of the systemic risk is today.

Small national banks had, up until that time, a history of stability. During the 1970s and early 1980s, the condition of small banks did not change appreciably between examinations.

Looking back with the clairvoyance that the passage of time provides, the OCC could have devoted more attention to small banks.

In the future, we will.

Next year, we will continue our policy of conducting annual examinations of banks with assets in excess of $1 billion and of all troubled banks.

In addition, over the next two years, we will begin examining highly-capitalized small banks on an 18-month cycle.

To meet that schedule, we must hire about 300 new examiners — thus increasing our field force by about 15 percent.

Of course, this is what the administration's legislative proposal would require us to do — and our support for that proposal is clear from our taking action before we are required to.

Do we expect these actions to eliminate all small bank failures?

No.

Despite the best efforts of regulators, banks that are exposed to local economies are going to suffer a great deal when the economies in which they lend turn downward.

And some of them will fail.

But more frequent examinations will give us better information about small banks. And better information will promote more effective supervision.

Just briefly, I will touch on a few of the other actions that have arisen from our reassessment in the wake of the high rate of bank failures in the Southwest.

In 1988, we completed a study of national bank failures that demonstrated that the quality of bank management almost always spells the difference between success and failure when a troubled bank operates in an economic downturn. As a result, we have intensified our focus on bank management practices and intensified our testing of internal control systems to be sure they work. In 1989, we adopted new supervision guidelines to review the quality of bank management.

As I noted before, the OCC began in 1988 to alert banks to the risks of excessive concentrations in real estate lending if bankers had not devoted sufficient attention to sound underwriting standards. We again pointed out deficiencies that our earlier examinations had disclosed.

In 1988, we also distributed the first federal bank examination guidelines for evaluating the risks of highly leveraged transactions. These guidelines were followed by full scope examinations with special emphasis on HLTs.

In 1989, we adopted a closure rule under which we close a bank when its equity capital is exhausted. As you know, the previous policy was to close a bank when it exhausted its primary capital, including its loan loss reserve. Since 1989, the current rule has saved the insurance fund significant dollars.

Over the years, the OCC lost many of its best and brightest examiners to the other banking agencies, which could pay them higher salaries. To deal with that problem, we worked with Congress to establish a compensation program that would be competitive with those of our regulatory counterparts — and, now that the program is in effect, we have lowered our turnover rate significantly.

Over the past few years, we have expanded the capacity of our financial analysis to detect signs of deterioration and other concerns in the economy and in the banking system earlier. This improvement gave us an early warning of problems in HLTs and real estate lending in 1988.

And we have significantly increased the number of enforcement actions to ensure bank management's follow-up on problems that we identify. Formal and informal actions increased from 316 in 1988, to 415 in 1989, to 559 in 1990. We are bringing more enforcement actions against people, instead of institutions. And in some cases, we have sought the removal of bank managements.

All of our efforts focused the attention of senior bank managements on their problems. If the banking system had continued in the direction it was heading in the mid-1980s, the system simply would not have survived the inevitable disaster.

About this time last year, a young friend of ours named Holly moved from Houston — where she had lived all her life — to New York City to attend graduate school. Early last December, Holly opened the door to her apartment one morning and found a greeting card taped to the outside. It read: "Merry Christmas from the custodial staff."

"How sweet," Holly thought.

Then, with [illegible] — final exams and term papers and gift shopping — she forgot about it.

A week later she came home to find another card taped [illegible].

This time it read: "Merry Christmas from the custodial staff — Second Notice."

To avoid any misunderstanding of our actions and intentions — so that everyone will get the message — I will be outspoken, frank, and direct this morning:

Though some of the details are still developing, the outlines of bank regulation in the 1990s are clear. They are clear in the actions that the OCC has taken. They are clear in the actions we intend to take in the future.

Regulation has become closer — and it will continue to be. Closer attention will continue to be paid across the board.

Earlier intervention by the regulatory authorities when signs of danger appear will become more frequent. More frequent in national bank closures. And more frequent in assuring that bankers recognize their problems and that they follow up to correct them. At the same time, we're taking steps to make sure we're balanced, reasonable, and consistent in the way we supervise banks.

I was recently talking to a friend of mine who is a coach at Texas A&M University. He was complaining about a star athlete there who was failing all his courses.

"Can't he see the writing on the wall?" I asked.

"Sure, he can see it," the coach said, "the trouble is, he can't read it."

For the last three years, all of us — bankers and bank regulators — have had the writing on the wall read to us. By now, everyone knows what it says — and what it means for the future.

Statement of Robert L. Clarke before the House Committee on Banking, Finance and Urban Affairs on the role of the OCC in approving mergers that involve national banks, Washington, D.C., September 24, 1991

Mr. Chairman and members of the committee, I am here this morning to discuss the role of the Office of the Comptroller of the Currency (OCC) in approving mergers that involve national banks.

Mergers that concentrate banking assets in a smaller number of financial institutions raise obvious and appropriate concerns about maintaining competition in financial markets, and ensuring the availability of credit and other banking services to all members of the banking public. For that reason, proposed bank mergers are reviewed by the OCC and other federal banking agencies (the Federal Reserve, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision), and by the Antitrust Division of the Department of Justice, to ensure that the resulting bank will have sufficient capital and management resources to operate in a safe and sound manner, that it will serve public convenience and needs, and that the merger will not substantially lessen competition. The banking agencies, of course, also consider the merging banks' record of performance under the Community Reinvestment Act (CRA).

I believe that the current trend toward somewhat greater consolidation in the banking industry is in large measure a response to the technological changes that have fundamentally altered the nature of banking.

While it is reasonable to ask at what point mergers could begin to result in undue concentrations of economic power, we should keep in mind that the United States currently has roughly ten times as many commercial banks per capita as the rest of the G-10 countries combined. (The United States has 12,000 commercial banks; far more than the roughly 600 in the United Kingdom or the 150 in Japan.) Although that number is shrinking as a result of merger activity and other factors, the level of concentration is far less than in any other major industrialized country. Nevertheless, we recognize that regulators must continue to be vigilant about antitrust concerns, particularly as they relate to local markets.

My statement will begin by summarizing current trends towards consolidation in the banking industry. I will then outline for the committee the procedures that the OCC follows in reviewing merger applications, and the factors that we consider. I will also discuss the effects that bank mergers have on the safety and soundness of the banking industry, on the availability of credit and other banking services to the public, and on the condition of the federal deposit insurance system.

Trends in Bank Mergers

The banking industry has undergone wrenching changes in recent years, as evolution in the markets for financial services has eroded the industry's traditional lines of business. Technological advances have changed the way financial services are delivered to businesses and households, and exposed banks to new sources of competition. The blue-chip corporate borrowers who previously were an important source of bank business and profits have developed other funding sources, such as the market for commercial paper. Record numbers of bank failures and chronically weak earnings — averaging less than 8 percent return on equity for the past five years — have placed enormous pressure on banks to improve the efficiency of their operations.

Banks are attempting to reorganize their business to compete more effectively in today's markets. One notable development has been consolidation. Merger activity, involving banks of all sizes, is resulting in a banking system that has fewer banks, a higher concentration of assets in large banks and multibank holding companies, and an increasing number of bank holding companies operating banks in more than one state.

The number of insured commercial banks in the United States has declined steadily since 1984, when there were approximately 14,400 banks. Yet there were still about 12,200 at the end of 1990. That is a net reduction of about 2,200 banks. (In fact, 3,600 banks disappeared between 1984 and 1990; 1,000 as the result of bank failures, and 2,600 through mergers among solvent banks. The net reduction was only 2,200 because 1,400 new banks entered the market during the same period of time.) A similar process of consolidation has taken place among holding companies. The number of banking companies has declined from roughly 12,000 at the beginning of the 1980s to 9,500 by the end of the decade.

Market-Extension Mergers

A leading reason for bank mergers is to diversify asset portfolios and funding sources more fully, protecting the bank against local economic shocks. Properly struc-

such market-expansion mergers also produce cost reductions through the elimination of duplication in systems and overhead. The recently proposed merger of NCNB and C&S/Sovran, for example, appears to be primarily a market-extension merger, although the two companies share some territory in Florida, Georgia and South Carolina.

As the benefits of geographic expansion have become more apparent, many states have repealed unit-banking laws or relaxed other restrictions on branching. Similarly, interstate banking compacts that went into effect during the latter half of the 1980s have permitted banking companies to pursue the benefits of geographic expansion through interstate acquisitions.

Banking companies will continue to expand geographically, as they pursue opportunities opened up by recent state laws authorizing interstate banking, some of which are only now taking effect; and as states that have not already done so pass similar laws. Congressional amendment of the McFadden Act and the Douglas Amendment to the Bank Holding Company Act — steps proposed by the administration and included in H.R. 6, which this committee marked up in July — would provide an additional impetus to these changes.

Projecting how rapidly consolidation will proceed is difficult, because it will depend on how rapidly the remaining legal barriers to interstate banking are removed, and on a host of economic variables that are difficult to forecast precisely. A conservative estimate, based on current state and federal law and obtained by extrapolating from past trends, projects 11,000 banks in 1992 and 10,000 banks in 1995.

"In-Market" Mergers

A second type of merger involves banks operating in the same or substantially overlapping markets. The recently proposed merger of Chemical Bank and Manufacturers Hanover appears to be an example of such an "in-market" combination. The proposed merger of Bank of America and Security Pacific — both of which operate primarily in California and Washington state, often in the same cities — also appears to fall mainly into this category, although each bank also has significant operations outside the geographic territory of the other.

In-market mergers are designed to reduce costs by consolidating overlapping branch networks, combining data processing, accounting and other "back office" operations, and by obtaining other economies of scale. Such cost reductions have taken on heightened importance in recent years, as competition from other sectors of the financial services market has squeezed profits at commercial banks. We can expect to see more proposals for in-market mergers in coming months; one measure of their success will be whether the merged institution can in fact achieve the projected cost savings.

OCC Review of Merger Applications

Mergers reflect the judgment of bank managers and shareholders that two banks can operate more efficiently and more profitably as a single entity. But that does not mean that every proposed merger is intelligently structured, or that every merger application will be approved by the OCC. The prospects for a successful merger depend, among other factors, on the presence of a sound operating plan that specifies how the merging banks will integrate their businesses, their systems, and their controls. Particularly with large mergers, it is imperative that merging institutions demonstrate how they will blend the organizations together.

All mergers in which the resulting bank is a national bank are subject to approval by the OCC. This includes mergers of banks and thrifts into national banks, consolidations of banks and thrifts with national banks where the national bank is the resulting institution, and purchase and assumption transactions in which national banks acquire assets and assume liabilities of other banks and thrifts.

OCC review is initiated when a national bank applies to the OCC for approval of a merger. The OCC sends copies of the application to the Department of Justice, the FDIC, and the Federal Reserve for their views on the competitive effects of the proposed merger. Those agencies generally have 30 days to review and comment on the application.

A national bank that is party to a merger must also announce its intention to merge in a general-circulation newspaper that is published in the city in which the bank's main office is located. The notice must be published three times at approximately two week intervals spanning the OCC's 30-day comment period. In addition to providing information on the structure of the proposed merger, the publication provides interested parties the opportunity to comment to the OCC on the merger.

Mergers between banking institutions are analyzed by the OCC to determine the effects of the merger on competition in the markets where the institutions operate. This analysis is generally not conducted for corporate reorganization mergers, because they rarely have any effect on competition. For example, a trans-

action in which a multibank holding company merges two or more subsidiary unit banks to form a single bank with branches normally does not reduce either the number of banking outlets serving the public or the degree of competition in any market, because the banks involved are already commonly owned prior to their merger.

The OCC's role in mergers of banking organizations varies depending on the structure of the transaction. If a transaction is a merger among two or more unaffiliated banks, and the resulting bank is a national bank, the OCC is responsible for assessing the effect of the proposed merger on competition, and for approving the transaction. If the transaction is a merger of two or more holding companies, then the Federal Reserve is responsible for reviewing the merger. The Federal Reserve solicits the OCC's comments on any merger of holding companies that have national bank subsidiaries. In most of these instances, our response is directed primarily at supervisory concerns, since we know that competitive effects are being examined by the Federal Reserve and the Justice Department.

Many mergers involve both types of transaction: a merger of two or more bank holding companies accompanied by a merger of their subsidiary banks. In such instances, the competitive aspects of the merger are considered by the Federal Reserve and the Justice Department in the course of their review of the holding company merger — a review in which, as I pointed out, the OCC has a consulting role. The OCC, in considering the competitive effects of the holding company merger, relies on the analysis conducted by the Federal Reserve and on the views provided by the Justice Department. When the OCC reviews the merger of the subsidiary banks — a corporate reorganization that has no competitive effects — we focus primarily on supervisory concerns.

OCC Merger Policies

In acting on mergers, the OCC strives to preserve the soundness of the national banking system and to promote market structures conducive to competition. Normally, the OCC will approve a merger that would not have a substantially adverse effect on competition and would be beneficial to the merging banks and to the public.

In determining the effects of a proposed merger on competition, the OCC first identifies the relevant geographic market. As a general rule, the OCC begins with the area within which most of the bank's customers — including individuals and businesses — reside, and within which the effect of the merger on competition will be most direct and immediate.

The OCC considers both the structure of the market and the intensity of competition within it. The OCC's analysis identifies the competitors in a market and examines statistical measures of market concentration such as Herfindahl indices. The Department of Justice guidelines on competition are a useful standard of comparison for this analysis. Indeed, the OCC offers a simplified application process to those applicants who can demonstrate that they clearly fall within the Department of Justice's guidelines for mergers that do not have significant adverse competitive effects. However for other applicants, the OCC analysis of competition does not end with the assessment of market statistics. Several additional factors may influence the assessment of competition including, for example, the size of the market, the number and types of competitors in the market (including nonbank and non-local competitors), the variety of services offered by the merged institution, the pricing of those services, advertising, office hours, and banking innovations.

The OCC believes mergers that promote competition generally improve the prospects for satisfying convenience and needs in affected markets. For example, a merger can provide additional locations at which the customers of each of the merging banks can conduct their business. A merger can also make it possible for the resulting bank to provide services — such as credit counseling, fiduciary, data processing, or international banking services — that one or both of the merging banks might have been unable to offer individually. Finally, a merger raises the lending limit of the resulting bank, thereby increasing its lending opportunities in the communities it serves.

The Bank Merger Act provides that a merger that has substantially adverse competitive effects may still be approved if the adverse competitive effects are clearly outweighed by the probable effects of the merger on improved customer convenience and needs. Such circumstances may arise, for example, in the resolution of failing banks, if the closure of a bank would leave some communities without banking services.

As provided by CRA, the OCC considers the record of performance of merging banks in helping to meet the credit needs of their communities, including low- and moderate- income neighborhoods. This assessment is based on information gathered in CRA compliance examinations conducted by the OCC and other banking agencies, from correspondence received from bank customers, and from comments provided by interested parties during the 30 day public comment period. If CRA performance needs improvement or is unsatisfactory, the merger application may be denied or it may be approved subject to conditions requiring correction of weaknesses in performance. CRA condi-

[illegible] must be met before the merger takes place.

The OCC carefully analyzes the current and prospective condition of merging banks. When national banks apply to merge with state-chartered banks or thrifts, the OCC may conduct an examination of those institutions before acting on the merger. The OCC will not approve a merger that will result in a bank with inadequate capital, unsatisfactory management, or poor earnings prospects. Although we may grant conditional approval in some cases based on satisfactory resolution of supervisory problems noted by the OCC or commitments to increase capital, we will not grant final approval until these matters are resolved.

Supervision of Merged Banks

Several changes made within the past year in the OCC's supervisory practices, designed to improve our supervision of all banks, will also help to ensure that large banks created by mergers are supervised properly.

- The OCC's "large bank program" will provide a mechanism for coordinating the supervision of large regional and multinational banks to ensure that policies are applied consistently and resources are allocated effectively across districts.
- The OCC has established a regional bank director and regional bank analysts in each district office. Their responsibilities include monitoring examination activities in the regional banks located within their district, ensuring that identified deficiencies in the banks are addressed expeditiously, recommending enforcement action as appropriate, and analyzing the results of the examinations to determine any potential for systemwide effects.
- The OCC has also designated consumer/community reinvestment act/retail banking experts in each district. These examiners spend most of their time examining the performance of multinational and regional banks in these areas.
- The OCC is participating in a pilot program with the Federal Reserve, the FDIC, and appropriate state banking agencies to coordinate the supervision of large regional banking companies that have both national and state-chartered bank subsidiaries. This program represents the first time that primary state and federal regulators have conducted simultaneous coordinated reviews of the same banking companies.
- The OCC's practice of assigning full-time resident examiners to the largest U.S. banks, previously limited to multinational banks, has been expanded to cover all banks with over $10 billion in assets.

Economic Effects of Mergers

The review of merger applications that I have described focuses on the effects that a particular merger will have on a particular affected market. The OCC is also concerned with the cumulative effects of bank mergers on both the banking industry and the economy as a whole.

Effects of Bank Mergers on Bank Safety and Soundness

I believe that intelligently structured consolidation can, in fact, improve the safety and soundness of the banking industry. In-market mergers can improve the operating efficiency of the merging banks, while mergers that enable banks to extend the geographic scope of their operations can reduce their exposure to local or regional economic shocks. Resulting increases in operating profits and greater geographic diversification should enhance safety and soundness by enabling banks to build more capital and to better withstand economic downturns.

The OCC recognizes that measures designed to increase operating efficiency may impose hardships on bank employees. Reductions in overhead expenses and elimination of duplicative operations can involve layoffs and reassignments, and mergers can also require employees to make painful adjustments to new procedures and a new corporate operating style. Bank customers may also bear some transition costs. For example, the elimination of duplicative branches can be a major source of cost savings in in-market mergers. Many customers will experience a net improvement in convenience, since they can now use the branches of either of the merging banks. But branch closings may make it necessary for some customers to use a branch that is farther from their home or workplace, or to switch banks. We encourage banks to work with the communities they serve in order to minimize such service disruptions.

Effects of Bank Mergers on Federal Deposit Insurance

To the extent that consolidation enables the banking industry to increase its profitability and capital levels, mergers should reduce failures, which should save the Federal Deposit Insurance Corporation money. Further-

more, large banks are more likely to be able to absorb a random economic shock of a given size without becoming insolvent, since the capital and earning base of the combined institution is larger.

"Too Big-to-Fail"

It is the practice of the FDIC to resolve failures of both large and small banks using methods — such as purchase-and-assumption transactions — that protect uninsured as well as insured depositors, even when this is not the least expensive resolution method. Both the administration and the House banking reform bills include provisions that would minimize the number of cases when this would occur, by requiring the FDIC always to use the least-cost resolution method. Thus, even if mergers increase the number of large banks, passage of banking reform legislation will help ensure that the use of the "too-big-to-fail" doctrine will be a much rarer occurrence.

Effects of Bank Mergers on Competition

Even though the OCC carefully reviews every merger application that it receives to ensure that it will not substantially reduce competition in the affected markets, the cumulative effect of mergers is to increase the degree of concentration in the banking industry. It is reasonable to ask at what point the process of consolidation could begin to result in an undue concentration of economic power that enables a small number of banking companies to set interest rates on deposits or loans that differ from those that would prevail in a competitive market.

This issue must first be placed in perspective. Notwithstanding the current trend towards consolidation, the U.S. banking industry is and will remain highly competitive. While 3,600 commercial banks have exited from the market in the past six years through merger or failure, there are still approximately 9,500 independent banking companies in the United States. That is far more, on either an absolute or a per capita basis, than in any other major industrialized country. U.S. banks face additional competition from thrift institutions, credit unions, foreign banks, mutual funds, insurance companies, and other non-depository financial intermediaries.

Furthermore, while mergers have increased the portion of total bank assets controlled by large banks, the share of total banking assets controlled by the nation's largest bank remains below six percent. The three largest banks together control 12 percent of total banking assets, a figure which recently publicized merger proposals would increase to 15 percent. Of course, these national statistics do not tell the whole story, which is why the OCC's procedures for competitive analysis of proposed mergers begin by examining the local markets served by the applicants. Nevertheless, it is reasonably clear that the U.S. banking industry is significantly less concentrated than most U.S. manufacturing industries, and also far less concentrated than the banking industries of other major industrialized countries.

Furthermore, there are still approximately 11,000 banks with assets of less than $300 million operating in the United States. The presence of these smaller banks, combined with the entry of new banks into the market that has persisted throughout the period of consolidation, make it virtually impossible for large banks to wield significant monopoly power.

Effects of Bank Mergers on Credit Availability

A related concern is that the large banks created by mergers will displace community banks from local markets, and that credit availability to individuals and small businesses in those communities will suffer as a result.

Although the number of large banks and the share of total banking assets that they control may continue to increase, I do not believe that they will come to dominate the U.S. banking industry. In my experience, success in competing for banking business depends far more on the quality of service than on size. And while large banks may have an advantage in providing certain types of banking services, such as mortgage servicing and credit card operations, smaller community banks retain unique advantages in other areas, such as providing personalized service to depositors and obtaining information on local credit markets. In California, for example, where some of the nation's largest banks have built extensive banking networks serving small cities and towns, the community bank sector of the banking industry has continued to prosper.

Similarly, I do not believe that small banks and the customers they serve will be squeezed out of credit markets by large banks. As a general rule, credit markets operate efficiently to identify creditworthy borrowers and link them with sources of funding.

Thus, if large banks develop a competitive advantage in raising funds, and if they are not interested in using those funds to finance profitable small businesses directly, I believe that other market participants will find a way for them to do so indirectly — for example, by serving as a source of funding to community banks. If they do not, they will leave an unfilled market niche that can be filled by community banks. Either way, community banks will retain an important role in credit

[illegible] and other local borrowers will generally be able to obtain the [illegible] they need.

Conclusions

The OCC's procedures for reviewing merger applications are guided by the same general principles that underlie our other responsibilities. Strong supervision is needed to ensure the safety and soundness of the banking system, but it should take the form of prescribing sound procedures and directing corrective action when banks depart from those procedures.

Economic forces and technological innovation are driving the changes that we are seeing in the structure of the banking system. Change is needed if the banking system is to remain strong. I believe current laws and regulatory standards, coupled with our review procedures, are sufficient to ensure the preservation of competition and of service to the banking public.

Statement of Robert L. Clarke before the Senate Committee on Banking, Housing, and Urban Affairs on his nomination to serve a second term as the Comptroller of the Currency, Washington, D.C., September 26, 1991

Mr. Chairman and members of the committee, I am honored to be nominated by President George Bush to a second term as Comptroller of the Currency. I appreciate your consideration of my nomination.

I realize that serving another term as Comptroller of the Currency in these challenging times for financial institutions will not be easy. But, I am just as committed to working to ensure a safe and sound banking system now as I was when I arrived in Washington in December, 1985. I am proud to be associated with the OCC's dedicated and professional staff, whose willingness to serve in times of stress has been exemplary. I am proud of our accomplishments and the steps that we have taken to improve our supervisory processes. And I continue to support efforts in government and within the industry to assure that commercial banks can serve the needs of the economy.

As you know, the OCC supervises the nearly 4,000 national banks — that is, federally chartered commercial banks. Although they number less than one-third of all commercial banks, they hold 60 percent of all commercial bank assets.

While we are here today to consider my nomination for a second term as Comptroller of the Currency, in a broader sense, this occasion gives us an opportunity to examine the events affecting the banking system over the past five and one-half years and the response of the OCC and other regulators to the difficult environment in which banks have operated. In my statement, I will review the major problems the industry has faced, what the OCC and the other regulators are doing about them, and the lessons we have learned.

Problems in the Banking Industry

To assess these past five and one-half years, we must look at the economic conditions and the state of financial institutions. During the 1980s, competition and economic circumstances combined to weaken the banking industry to an extent not seen since the 1930s.

Banks have lost many of their traditional commercial and industrial loan customers. Many of those customers no longer take out commercial loans; instead they get their funding from capital markets directly with the help of securities firms.

Banks were also subjected to the effects of [illegible] regional economic collapses. In the early 1980s, the decline in the agricultural sector touched off problems for banks serving farm communities. Later in the 1980s, the real estate markets collapsed in the Southwest after the decline in oil prices. More recently, the real estate markets in New England have deteriorated, triggered by the sharp declines in the electronics and computer industries. Today, nearly 60 percent of problem commercial bank assets are tied to real estate loans, compared to 21 percent as recently as 1983.

These economic events severely stressed the supervisory systems in place in the mid-eighties. No one, including the regulators, foresaw the extent of the successive collapses in the economies of the Midwestern agricultural states, the Southwest, and the New England states. As a result, failures of commercial banks — state and national — rose to extraordinary levels.

Regulators' Respond to These Challenges

There are broad similarities in how the regulators have responded to these challenges, despite our different terminologies. Current OCC policy requires a complete examination of every national banking company with assets in excess of $1 billion, and of every troubled bank. We will do the same next year. Those banks currently hold 80 percent of the assets of national banks. The administration has proposed that regulators be required to examine all large and troubled banks annually and all other banks at least every 18 months. We support the administration's legislation and, consistent with that proposal, the OCC plans to hire approximately 300 additional examiners over the next two years.

Not surprisingly, the record shows that all of the bank regulators have had some difficult years. Over the last five years, many banks have failed. For the OCC, the failure story is mostly a Texas story. Nationwide, about one-third of all banks are federally chartered. But in Texas, at the beginning of 1986, more than one-half of the banks were national banks. In Texas, 23 percent of all banks failed, these included many national banks. However, outside of the Southwest, the failure rate of national banks between 1986 and 1990 was [illegible] lower than that of state banks supervised by either the Federal Reserve or the FDIC.

Moreover, all three federal regulators appear to have similar performances in timing the closure of troubled banks. The loss per dollar of assets incurred by the Bank Insurance Fund in resolving failed banks is virtually the same for the OCC, the Federal Reserve, and the FDIC.

Examples of OCC Successes

I believe the OCC has had some important successes in helping troubled banks return to health. For example, the agricultural banks that recovered from the stresses of the early 1980s did so because of the cooperative efforts of bank supervisors, agricultural bankers, and bank customers. Supervisors required banks to place realistic values on assets. Bankers and borrowers worked together to avoid a repeat of an overextension of credit based upon expectations that ever-increasing commodity prices would cover up any shortcomings in loan underwriting. Over the same period, Bank of America, N.A., the nation's second largest bank, recovered from serious problems. That bank's recovery was, in large part, the result of efforts of OCC examiners who forced the bank to acknowledge serious problems in its operations and who followed through by working with conscientious managers committed to taking corrective actions.

We also have made significant improvements in the supervision of banks as a result of the experience we gained in the Midwest, the Southwest, and New England.

- After we conducted special examinations in a group of large, regional banks with substantial real estate loan portfolios, the OCC alerted all national banks to the risks of excessive concentrations in real estate lending and to the importance of sound underwriting standards.

- We developed guidelines to alert bank management to the importance of sound underwriting standards for loans related to highly leveraged transactions (HLTs), and, in 1989, we conducted full-scope examinations with emphasis on the HLT lending practices of national banks.

- The OCC played a key role along with the other federal bank regulators in developing risk-based capital standards that more accurately tie a bank's capital requirement to the risk in its asset portfolio. Those standards also improved the quality of regulatory capital by placing increased emphasis on equity and limiting the amount that the allowance for loan and lease losses can count toward regulatory capital. As a result of those standards, the majority of the larger banks are required to have more equity capital than they needed to meet the old minimum capital standards.

- The OCC, working with bank management and the FDIC, has explored creative ways to minimize the cost to the bank insurance fund by resolving failed banks earlier. For example, the recent sale of the Southeast Bank, N.A. cost the Bank Insurance Fund a fraction of what banks of that size have cost in the past.

- The OCC has taken steps to increase the effectiveness and experience level of its workforce. By offering competitive salaries and benefits that are comparable to the other bank and thrift regulatory agencies, as provided by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) (which this committee was instrumental in passing), we have reduced turnover and have increased substantially the number of commissioned examiners. In 1987 we boosted the number of examiners by about 13 percent, and since the end of 1990, we have begun again to increase our examination force. So far, in 1991, we have increased the number of examiners by more than 100, including adding approximately 75 experienced credit examiners.

- We intensified our focus on bank risk management practices; and in 1989, we adopted new supervision guidelines to assess the quality of bank management.

- We have improved our bank supervisory processes. For example, every multinational bank is assigned a full-time resident examiner team. Every large regional bank is assigned at least one examiner whose full-time job is to oversee the supervision of that bank. In addition, we have assigned each of the other national banks to a specific bank examiner who is responsible for the supervision of that bank.

- We recently created a new position in each district to manage staff who focus on the larger banks. This provides other district managers with more time to devote to overseeing the supervision of smaller community banks.

These accomplishments are evidence of the progress that the OCC has made to strengthen its supervision of the national banking system. Wherever we find weaknesses in our own operations, we work to improve them. Wherever we see opportunities to do our job better, we seize them.

The Changing Environment

While I have been Comptroller, volatile regional economies put banks in Texas and New England under great stress. The situation in Texas, where 289 national banks have failed since the beginning of 1986, was one of the most difficult matters with which I have had to deal. As economic conditions worsened in 1986, our examiner force was put under great pressure. The shortage of experienced examiners in the Southwestern District, which had existed for many years, impaired the OCC's ability to respond to the growing problems at national banks in Texas.

Since more than half the banks in the state (and almost all of the largest banks) were national banks, it is not surprising that, when that economy collapsed, we felt the pinch on our resources first, and we felt it the hardest of all the federal regulators. We took the unprecedented step of paying a bonus to experienced examiners willing to relocate to Texas. We also temporarily shifted teams of examiners from other OCC districts to Texas. Relying on newly hired personnel was not the solution because, at the time, there were not enough experienced examiners to train them.

Another concern has been the OCC's supervision of the Bank of New England (BNE). When the bank's earnings and capital were strong and the regional economy was healthy, we did not take forceful enough action when examiners noted problems in parts of the bank's lending operations.

Nonetheless, when the extent of the problems became apparent at BNE in 1989 and 1990, the OCC moved decisively. We took enforcement actions that required BNE to make a sizeable addition to its reserve for loan losses and to restate earnings. The management of the bank was replaced with a team that aggressively worked to recapitalize the banks by selling assets of the holding company and by using the proceeds of those sales to add capital to the banks. In keeping with the bank closure policy we adopted in 1989, we declared BNE insolvent immediately upon the depletion of its equity capital, when it still had a substantial allowance for loan and lease losses. That move, in and of itself, provided the FDIC a $l.4 billion cushion against losses. To make sure that we do a better job of supervision in the OCC's Northeastern District in the future, I made changes in the district's top management.

Personal Financial Transactions

Finally, let me turn for a moment to a subject that has been personally painful for me — the questions raised earlier this year about my financial transactions and personal integrity. Before I became Comptroller in late 1985, and each year since then, my financial holdings and transactions have been extensively reviewed and approved by various government ethics officials. In response to the questions raised about my investments this year, I requested that government ethics officials review my financial holdings and transactions once again. I also committed to place my investments in a blind trust and to take any additional steps recommended to ensure that my personal financial transactions do not raise even the possibility of an appearance of impropriety. I took this action because it is important that the public is completely confident that bank regulatory decisions are made objectively, impartially, and entirely in the public interest.

The Treasury Department completed its review and on June 4, 1991, reported that my financial investments and activities did not give rise to any conflicts of interest. The Office of Government Ethics (OGE) subsequently conducted a review as well. In its September 20, 1991, report to Senator Carl Levin (D-MI), the OGE stated:

> Based upon our review, we believe there is no demonstration that Mr. Clarke conducted his personal financial affairs with disregard for ethics standards. He disclosed all interests, executed and abided by all recusal agreements and most importantly, according to Treasury, sought advice from ethics officials when he had any question as to the manner and appropriateness of his private sector financial transactions.

The report went on to say:

> This Office believes that the actions proposed by Treasury and OCC officials will eliminate any problems associated with Mr. Clarke's financial interests and will improve the cooperation on conflict of interest issues among OCC, FDIC, and RTC.

Finally, in response to questions posed to me by the chairman in the letter of invitation to this hearing, I provided additional detailed information on my financial investments last Monday. I regret that my financial transactions have raised any concerns about a conflict of interest. I firmly believe that these questions about my personal finances have, by now, been addressed.

Conclusion

Tough economic conditions in different regions of the country have provided a trial by fire for all regulators. Our track records are similar. We all had some successes, we all made some mistakes, and we all learned some important lessons.

[illegible] committed to continuing to improve the quality of OCC's examination and supervision of national banks. Just as banking has not remained static during the last five and one-half years, our examination and supervision have changed and must continue to change to meet the variety of challenges facing banks today and in the years ahead.

Some of the changes I initiated are not yet done and I want to see them through to completion. As I have throughout my current term as Comptroller, I will keep open the lines of communication with the Congress, other regulators, examiners, banks, and bank customers.

The problems facing the banking system are not simple. The next few years will be critical for the financial services industry, and I want to continue guiding and improving the supervision of the national banking system as we tackle the challenges ahead.

Statement of Donald G. Coonley, Chief National Bank Examiner, before the House Banking Committee on Banking, Finance and Urban Affairs Policy Research and Insurance Subcommittee, on the asset-backed securities market, July 31, 1991

Introduction

Mr. Chairman and members of the subcommittee, I am here to respond to questions you have raised about the development of the asset-backed securities markets. Like the subcommittee, the OCC is concerned that the roles played by banks in the securitization process may introduce a variety of risks that need to be well-managed and controlled. In my statement, I describe the Office of the Comptroller of the Currency's (OCC) procedures for supervising the participation of national banks in the market for asset-backed securities.

In general, the OCC believes that banks should be permitted to participate in these markets, as long as they have a demonstrated ability to measure and manage these risks. Like all the other components of our financial system, there are risks to engaging in the activities of the asset securitization process, and there are rewards for doing so. As regulators, we want to be sure that banks make careful evaluations of the risk/reward trade-offs. If a bank cannot demonstrate that it can make this evaluation, it is not operating in a safe and sound manner, and we would criticize its participation in this activity.

Before discussing OCC policies and actions to deal with the risks from asset-backed securities, I would like to clarify what asset securitization is, describe the benefits to banks from securitization, and note how banks participate in this market.

Asset Securitization Defined

In its simplest form, securitization is nothing more than the selling of assets. Relatively illiquid assets are transformed into capital market instruments. Loans with similar characteristics are pooled and the ownership of these assets is transferred to a trust that the loan originator establishes. The trust issues the securities that are acquired by the investors. Each issue of a security has a servicer, which may also be the originator, who is responsible for collecting interest and principal payments on the loans, and a trustee, who is responsible for transmitting these funds to investors.

A guarantor may also be involved to see that investors receive their payments on a timely basis, even if the servicer is unable to collect the payments owed by all the borrowers whose loans are in the pool. For some time now, many issues of mortgage-backed securities have been guaranteed directly by the Government National Mortgage Association (GNMA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), and more recently, the Federal Agricultural Mortgage Corporation (Farmer Mac).

Over the last several years, however, banks and others have been securitizing other types of assets, such as home equity loans, credit card receivables, automobile loans, boat loans, lease receivables, nonperforming loans, and leveraged buy-out credits. These newer securities carry different risks than mortgage-backed securities. We are concerned about the risks inherent to these products, especially since they rely upon collateral values, and are new and rapidly growing forms of securitized assets.

The Benefits of Asset Securitization

Several benefits accrue to banks participating in the asset-backed securities market. First, loans sold without recourse are removed from the balance sheet. This frees capital, which can be used to support new loans. Thus, for the same level of capital, a bank is able to originate more loans than it otherwise can under traditional lending procedures. Moreover, a lower level of deposits is required to support a given volume of originated loans. The costs associated with these deposits, such as insurance premiums and reserve requirements, are lower than if the bank had to finance loans with deposits. Lower bank costs contribute to overall bank profitability.

Second, some of the components of the risk inherent in lending — for example, the credit and funding risks — can be transferred to the investors in the security.

The selling bank can also earn fee income from originating loans that are sold and subsequently earn fees from servicing the loans. Once assets are sold, banks can immediately recognize income from

- syndication fees,
- previously deferred loan fees, and
- excess servicing fees created by the securitization process.

These factors can increase a bank's reported income and its return on assets.

The enhanced liquidity created by the securitization process is also a benefit. The pool of illiquid loans is converted into a security that carries a credit rating separate from any of the individual loans. Therefore, the assets sold as a pool are more attractive to the purchasers than if each asset was sold separately. Though the secondary market is not very deep for many asset-backed securities, it is more liquid than the market for individual loans.

Another benefit arises because enhanced securitized assets carry a higher credit rating than the debt obligations — or the uninsured deposits — of the originating bank. This higher rating, in turn, generates profits for the originating bank by widening the investor base. The yield required by investors in highly rated debt securities is often lower than what the bank would otherwise have to pay to attract funds. The lowered funding cost may enhance the bank's overall profits, though costs are incurred to obtain the higher rating.

Another benefit is that asset securitization can enable a bank to achieve greater diversification, both as a seller or purchaser. Loans originated in one geographic area may have common characteristics that make them vulnerable to locally adverse conditions. Being able to originate and sell these loans permits a bank to satisfy the credit needs of its market, while lessening the geographic concentration of credit risk. A bank purchasing securitized assets may also improve the diversification of its assets.

Asset securitization enables banks to perform their role of extending credit while "unbundling" the traditional functions of a financial intermediary. The risks of these traditional banking functions include credit risk, concentration risk, operational risk, liquidity risk, funding risk, and interest rate risk. Through securitization, some of these risks can be transferred to investors or independent guarantors who may be better able to assume these risks.

Securitization also separates a bank's lending and deposit-taking steps into several distinct roles. These roles are: loan originator, servicer, credit enhancer, trustee, seller, and purchaser. The risks attendant to each role are different. I will describe the OCC's response to the growth of asset securitization in the context of these separable risks.

The Risks of Asset Backed Securities

The [illegible] to the OCC arise from [illegible] securitization. The more important risks arise from bank participation as:

- originators of loans that are securitized;
- servicers, (who collect payments from borrowers and make payments to the investors);
- credit enhancers, (who guarantee payment to investors);
- trustees;
- sellers of their own securitized loans, and;
- purchasers of securitized assets.

Next, I will describe how the OCC's examiners evaluate a bank's exposure to these risks.

Risks to Originators of Securitized Loans

An incentive for converting assets into securities is to transfer some, or all, of the risks to the purchaser of the security. One of the OCC's greatest concerns is that originators will be confronted with a *de facto* form of recourse — a moral obligation to buy back from the investor the securitized loans that do not perform well. We are very concerned if problem credits are routinely repurchased, renewed, or rewritten as new loans to be held by the bank. If a bank buys back the problem assets, the bank loses many of the benefits that motivated the securitization. The bank would still retain the credit, funding, and liquidity risks.

The OCC is also concerned that an originator who becomes preoccupied with maintaining a high volume of loan originations may not adhere to prudent lending practices. The long-term quality of bank assets might deteriorate if the incentive structure is altered. Likewise, if only the best assets of the bank are suitable for securitization, the retained assets of lower quality create a more risky bank even when lending standards are not relaxed.

To evaluate how well the bank manages the risks arising from originating loans to be securitized, our examiners evaluate the bank's loan underwriting standards. A bank must have:

- carefully crafted credit standards — both for loans to be securitized and loans to be retained. We expect the two steps to be strictly separate; loan approval must be an independent judgment from the decision to sell or securitize.

- well-defined procedures for handling problem credits that have been securitized;

- a diversified investor base, and a diversified geographic base for securitized loans, and;

- procedures for disclosing individual, or aggregate, customer information to credit enhancers and investors.

Risks to Enhancers of Asset-Backed Securities

While the role of the federal government, and its agencies, as credit enhancers is well-known in the mortgage-backed securities markets, several other forms of enhancement also have been used to improve the credit rating of asset-backed securities. For example, overcollateralization is a form of enhancement in which the value of the pool of assets exceeds the value of the securities issued, thereby providing a cushion for possible losses on the individual loans.

A common type of overcollateralization — for most securities that have credit card receivables as the underlying asset — is the use of a "spread account." The spread account is an escrow account that is funded by the difference in the interest rate paid by the borrowers and the rate paid to the security holder. The amounts in the spread account are used to pay for the losses in the pool of credit card receivables. The use of a spread account enhancement insulates the sponsoring bank from claims that might be lodged against it that could affect its earnings and capital.

Another form of enhancement is the senior/subordinated structure, which is a means to provide an enhancement to the holders of the senior class securities. Only after the contractual payments have been made to the senior class are the cash flows directed to the investors in the subordinated class. Banks sponsoring senior/subordinated securities generally sell both parts of the securities to investors.

In other securitized loan issues, enhancement is provided through a bank standby letter of credit which guarantees the investors against any loss, up to a specified limit. Banks issuing letters of credit take on the credit risk that obligors will not make timely payments on their loans. Thus, the risk to an enhancer is very similar to the credit risk that would arise if the loans were retained on a bank's balance sheet.

The OCC wants to assure that banks that enhance asset-backed securities measure, manage, and price this credit risk correctly. To evaluate the management of the risks arising from providing a credit enhancement, OCC examiners review a bank's risk management policies and operating procedures. For example, a bank that enhances loans must:

- implement credit standards for the assets that it will enhance that are as stringent as the standards for loans that it would retain,

- ensure that it has policies and procedures in place so that predicted losses are reasonable and that an adequate reserve has been established;

- refuse to provide an enhancement for securities for which the bank also acts as trustee because of the conflict of interest between the bank and investor;

- ensure that the loans are geographically diversified, and;

- analyze how the enhancement was priced, and derive an adequate allocation of capital.

Risks to Servicers of Asset-Backed Securities

Servicing asset-backed securities can be a relatively low-risk income-generating activity. However, once the fixed costs of establishing a servicing operation are in place, the servicer has an incentive to increase the volume of its servicing activities to achieve economies of scale. Herein lies the risk of exceeding the capacity of the systems. Large out-of-balance positions, and tremendous cost overruns, can result from a breakdown in these systems, which are difficult to get up and running again. Servicing problems have the potential to precipitate a technical default, which in turn, may lead to a premature redemption of the security.

Recognizing that any servicer bears these risks, our examiners evaluate the bank's policies, procedures, and control mechanisms. Our examiners:

- evaluate the bank's planning to assess whether future growth in servicing can be handled;

- ensure that appropriate backup servicing arrangements are in place;

- assess management's determination that the servicing systems are compatible with the systems of the originating institution;

- evaluate management's method of determining its pricing of servicing,

- check that a thorough audit of the servicing area has been completed, and,

- assess the level of insurance obtained by the bank in relation to servicing volume.

Risks to the Trustees of Asset-Backed Securities

A bank trustee of an asset-backed securities issue protects the interests of the security holder by monitoring the servicer and, after receipt of the payment from the servicer, conveying the funds to the investors. If a bank trustee does not fulfill its responsibilities to the investors, the bank will likely be subject to litigation. The potential financial damages, as well as the harm to its relations with the public, are a serious risk to a bank.

We are concerned about the complex features of asset-backed securities and that the trustee's responsibilities may not be clearly defined. We are also concerned that a contested securities issue could damage the reputation of a bank that acts as a trustee, regardless of its legal standing. Thus, the OCC's examiners:

- ensure that the bank has contracts that have been reviewed by appropriate legal counsel;

- review the bank's evaluation of proposed customers and transactions to see that the bank can actually perform all the required tasks;

- evaluate the bank's assessment of the financial risk, and the risk to its reputation, from acting as a trustee;

- check for the existence of conflicts of interest, and policies to address conflicts if they arise;

- review the audit of the trust activities of the bank, and;

- assure that bank management has assessed the pricing and profitability of the activity.

Risks to Investors in Asset-Backed Securities

As purchasers of securitized assets, banks are exposed to the market risks of the underlying assets. For example, mortgage-backed securities often retain the same interest rate risk as a conventional fixed rate mortgage. Credit risk is likely to be less, because of the greater diversification inherent in a large pool of assets, where the investors own only a small share of each. Credit risk is also reduced by the enhancements that usually exist to improve the credit rating of the securities. Though the credit risk from default is likely to be minimal for many asset-backed securities, a bank may still be exposed to credit risk if the pool is of low quality, or the originator or servicer makes a serious mistake.

To evaluate a bank's management of investor risks, OCC examiners review several facets of the bank's risk management policies and operating procedures. A bank must have:

- a well-conceived business plan for investing in asset-backed securities. This plan should be integrated into the overall corporate strategy and the type of securitized assets that are appropriate should be delineated;

- limits on the volume of purchases:

  - on individual purchase size, and

  - on concentrations (geographic, originator, enhancer, servicer);

- clear designations of authority to approve purchases and to verify adherence to policies;

- experienced personnel, with sufficient expertise to evaluate and manage the risks, and;

- accurate, sufficiently detailed, and timely reports from management information systems.

Conclusion

I would like to conclude by repeating the central theme of our message: securitization provides benefits to the American public and improves the efficiency of the market. Yet, as in any financial market activity, there are both risks and returns. At the OCC, we want to be sure that banks make careful evaluations of the risks and rewards when they engage in asset securitization. A bank that does not demonstrate the ability to make this trade-off is not operating in a safe and sound manner, and we would criticize its participation in the securitization process.

For banks that carefully manage the risks, securitization separates the traditional roles of a financial intermediary. The unbundling of services allow for greater specialization, as well as diversification. However, the overall risk of the traditional banking functions remains, even though the risks are spread among the various players. The OCC is aware of these risks, and OCC examiners seek to ensure that they are managed prudently by national banks.

Statement of Donald G. Coonley, Chief National Bank Examiner, before the House Committee on Government Operations Subcommittee on Commerce, Consumer and Monetary Affairs, on the availability of bank credit, Washington, D.C., September 16, 1991

Mr. Chairman and members of the subcommittee, I appreciate this opportunity to testify on the influence of bank supervision on the availability of bank credit. I am here today to describe for you the Office of the Comptroller of the Currency's (OCC) loan review policies and their effect on the availability of credit. I also would like to share with you some recent actions we have taken to ensure that misunderstandings about our policies do not adversely affect the availability of credit to sound borrowers.

A critical part of the OCC's mission is to encourage national banks to follow sensible credit standards when they make loans, and to ensure that they properly account for their loans over time. Banks must remain safe and sound so they can continue to supply credit to the market. We cannot look the other way when we uncover problem credits, unsound credit practices, or overstated estimates of capital adequacy. If supervisors ignore problems, then actions to solve them will not be taken, and the situation will continue to deteriorate.

At the same time, we recognize that being overly stringent can have harmful effects. We try to be reasonable in applying our examination policies, and to work constructively with banks as they address their problems. We do not want bankers to make changes in their credit decisions based upon fear of unwarranted criticism by bank regulators.

To that end, the OCC has taken pains to allay fears among bankers that regulators would criticize prudent bank lending. Just over a year ago, Comptroller of the Currency Robert L. Clarke, Federal Reserve Board Chairman Alan Greenspan, and FDIC Chairman William Seidman met with officials of the American Bankers Association (ABA) to explain their concerns about loan quality and to express their belief that banks should continue to make sound loans to creditworthy borrowers. Since then, OCC officials have repeated that message in meetings and speeches throughout the country. In addition, the OCC has issued several policy statements intended to outline and clarify our policies on a number of loan related issues.

Before discussing OCC policies and practices, it is important to clarify exactly what the problem is. There have been numerous reports of reduced credit availability in New England. Data reported by banks, the Federal Reserve System, and private analysts indicate that the reduction in credit consists primarily of

(1) A decline of credit extended to real estate projects in areas where demand has declined.

(2) An increase in collateral and guarantee requirements for loans that are particularly sensitive to changes in economic conditions; and

(3) A decline in the availability of credit from certain banks that must concentrate on working out the identified problems that currently exist in their loan portfolios.

These are all rational responses to the significant and prolonged downturn in the New England economy. Bankers must assess the strength of the local economy and the ability of potential borrowers to repay loans, when making initial credit decisions and when monitoring and managing credits already on the books. A prudent banker will exercise caution in financing projects that do not appear to make economic sense under current conditions. Even when the borrowers have good credit histories and the projects might be considered attractive lending opportunities in a different economic environment, it may not be wise to extend credit when rental rates are falling and the prospects for achieving full occupancy are low.

The economic slowdown, led by the collapse of the commercial real estate market, has prompted many banks operating in New England, and elsewhere, to review their lending practices. Some banks have tightened credit standards that were relaxed during the 1980s real estate boom. Others have reduced the pace of lending to shore up their capital positions and strengthen their balance sheets

The ability of borrowers to obtain credit is limited by their ability to meet the loan underwriting standards set by the bank. In a depressed market, some borrowers with good credit histories will have difficulty meeting those underwriting standards. Moreover, when real estate values decline, borrowers wishing to renew a real estate loan often have to provide new equity to meet the same underwriting standards. Relaxing the standards would increase credit availability, but it also would increase the risk exposure of the bank and of the insurance fund that stands behind the bank.

The Congress and the public have made it clear that they want the OCC and other bank supervisors to take strong action to control risk taking by banks, minimize bank failures, and restore confidence in the banking system. They also must understand that supervisors cannot be tough with banks while letting the banks be permissive with their borrowers.

Supervising Credit Quality

Bank supervision is designed to encourage and reinforce sound decision-making by bank managers. Our job as bank supervisors includes three important tasks. First, we ensure that banks adopt and adhere to sound credit practices. Second, we ensure that their books accurately reflect the value of their assets and liabilities. And third, we ensure that national banks establish management systems that are capable of tracking bank activities and can reasonably anticipate and adjust to changing market conditions.

We expect bankers to have mechanisms in place to conduct their own asset quality reviews. The OCC strives to ensure that a bank's management has a true and reasonable understanding of its financial institution's condition and that management's decisions reflect this understanding. Bank management must be able to support its credit decisions to its board of directors and its shareholders. So we encourage, coax, caution, and, when necessary, compel national bankers to focus on the quality of their investments and, if necessary, improve them.

We work to ensure that banks accurately report the condition of their portfolio and maintain reserves that are adequate to protect against anticipated losses. This does not mean that we are not also willing to cooperate with the bank to find methods that, while not threatening safety and soundness, enable them to work out their problems. We do not insist that banks foreclose on property nor do we discourage banks from restructuring, renewing, or extending loans to achieve an acceptable repayment plan. In addition, if loan quality problems result in a bank having inadequate capital, we work with the bank to help it develop and follow a credible capital restoration plan that will return it to health.

Supervisors, however, also must be ready to close banks that cannot survive in a competitive market. Like other businesses, some banks fail. Failures are not necessarily a reflection of the quality of supervision that banks receive. Indeed, if bank supervisors guaranteed that every bank, regardless of management, was able to succeed, the banking system would become very inefficient. Rather, we should allow banks to fail, but only in a way that minimizes the cost to society and to the insurance fund.

Bank supervision is complex and requires the frequent exercise of judgment. There has been a great deal of confusion and misinformation about bank examinations, particularly the criteria we employ in assessing the quality of a loan portfolio. I would like to describe for the subcommittee how we go about assessing the quality of the loan portfolio.

Assessing the Quality of a Loan Portfolio

As you know, recent bank examinations have been associated with substantial additions to loan loss reserves by a number of large banks. These actions have led to concerns about the methods used by OCC examiners in determining the adequacy of a bank's loan loss reserves. During the course of an examination, we evaluate the adequacy of reserves based upon a review of individual loans. We do not base our evaluations on the general application of aggregate economic assumptions to the loan portfolio.

When OCC examiners review a loan for an income producing project, they assess whether the projected cash flows from the project and from other sources of payment are sufficient to meet required payments. This determination relies largely upon the bank's own estimate of future cash flows. For the most part, we do not impose our view of future economic conditions in projecting potential losses. As a practical matter, examiners usually will take the bank's appraisal and test it to see that the assumptions used are realistic. However, if the current condition of the project is inconsistent with the bank's recorded estimates, adjustments must be made. Should adjustments be necessary, we use available market forecasting data to reflect the reality of current conditions.

When we look at market forecasting data, we use the same data and data services that the banks themselves use. For example, if an office project is leased significantly below expected levels and office occupancy rates have fallen in the market where the project is located, the estimated projected cash flows must be correspondingly lower. In doing this cash flow projection we typically use the bank's own recorded forecast of the ultimate occupancy rate; but in doing so, we recognize that it will take longer for the project to be leased, and we require the bank's valuation to reflect that reality.

During a real estate loan review, examiners routinely check to make sure that the loan is supported by an adequately documented and up-to-date appraisal of

the property. If the appraisal that is on file is based on market values, occupancy rates, or lease-up rates that no longer reflect prevailing economic conditions — as can easily happen in a falling real estate market — examiners will call for the appraisal to be brought up to date. Finally, if the appraised value falls below the bank's credit exposure, casting doubt on the owner's ability to repay the loan, the examiners may call for an appropriate addition to the bank's loan loss reserves.

Classifying loans necessarily involves judgments on which reasonable people may disagree. But it would be wrong to conclude that it is this "gray area" of potential disagreement that is the central issue. There is no disagreement between bankers and examiners about the vast majority of loans that are being criticized and reserved against. They are simply not paying as the bank expected and, therefore, cannot be recorded as doing so.

During this entire process, bank management has the opportunity to discuss specific loans with the examiners. If the banker believes that the loan has been improperly classified, it is appropriate to raise questions at any time during or after the review process. We have encouraged bankers to do so. In addition, it is OCC policy that any national bank may request a formal review of any major decision reached as part of the supervisory process, including those related to asset classification and required reserve levels.

Loan Loss Reserves

If problems exist in a bank's lending portfolio, prudent reporting requires some recognition of the potential loss on the bank's balance sheet. This is the purpose of loan loss reserves. An examination may result in an agreement between the bank and the OCC to increase loan loss reserves; indeed, this has been a common occurrence in recent examinations. But examiners do not enter a bank with the intention of increasing reserves by a particular amount. Additions to reserves are simply a reflection of problem loans that surface during the examination.

In the vast majority of cases in which reserves are required, the loans are not performing as expected. In some cases, the payments may be current, but in criticizing the loan the examiner is recognizing the reality that the resources are no longer there to continue to make payments.

This can be illustrated by an example in which a developer has received a loan to construct and lease a new office building. If the leasing levels are not sufficient to generate cash flow that will meet principal and interest payments on the loan, it is reasonable to expect an examiner to question the underlying quality of the asset. This is true even if the borrower has been able to make interest payments on the loan to keep it current — many times we have found that the developer has been keeping the loan current only by borrowing the funds from another credit source, possibly even a loan at the same bank that underwrote the construction loan.

Working with Borrowers

We encourage banks to work constructively — consistent with sound banking practices — with borrowers who may be experiencing temporary difficulties. Such efforts may include reasonable workout arrangements or prudent steps to restructure outstanding credit extensions.

To facilitate such efforts, and to ensure continued credit availability, the OCC, in conjunction with the other three federal agencies that regulate banks and thrift institutions (the Federal Reserve Board, the FDIC, and the Office of Thrift Supervision), issued several joint policy statements in March 1991 clarifying regulatory and accounting policies that some banks had been interpreting too restrictively. Among the policies covered were the following:

- Institutions that do not meet minimum capital standards are not necessarily precluded from making new loans to sound borrowers. Similarly, institutions with credit concentrations are not precluded from making sound loans in the area of the concentration.

- Payments received on loans that have been partially charged off may be recognized as income on a cash basis, without requiring that the charge off be recovered first.

- Real estate should be appraised on the basis of its income-producing capacity, rather than its fire-sale liquidation value.

On July 30, 1991, the OCC issued Banking Circular 255 "Troubled Loan Workouts and Loans to Borrowers in Troubled Industries," (BC 255). BC 255 was issued as a means to encourage banks to develop prudent strategies to work with borrowers to maximize the recovery on troubled loans. BC 255 acknowledged that the renewal, restructuring, or extension of additional credit to borrowers may be part of a well conceived and effective workout strategy. If so, bank management will not be criticized for taking these prudent steps. In addition, the guidance in BC 255 reiterated OCC policy that it is appropriate for a bank to make additional loans

[illegible] loans, [illegible] where the bank has an existing concentration if it has effective internal systems and controls in place to manage concentration risk.

We have taken a number of steps to ensure the timely and effective communication of these clarifications to our examiners in the field. To begin with, the March 1 joint agency statements were sent immediately to all examining personnel via our electronic mail system. Within one week, OCC senior management held conference calls with many of our examiners to discuss the information contained in the statements. These statements also were discussed in meetings of examiners held in Washington and out in the field.

Once we issued BC 255, we held a conference call that included over 100 of our field offices. The purpose of the conference call was to explain and discuss the guidance contained in BC 255. Since that time, we have been involved in several meetings and hearings similar to today's. More are scheduled. We believe these actions, combined with other written guidance, effectively communicated this information.

Conclusion

The OCC does not want the availability of credit to sound borrowers to be adversely affected by supervisory policies, or by misunderstandings about those policies. The purpose of OCC examinations is to ensure that banks develop and adhere to sensible credit standards that protect their safety and soundness, not to discourage banks from making loans. We are encouraging banks to make loans to creditworthy borrowers at the same time that we are urging them to recognize the problems in their existing portfolios. I believe that this message is being heard. While some banks may be pulling back from lending, others are entering the market because they see the opportunities available to them.

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554 — May 7, 1990

This is in response to your letter dated January 19, 1990, in which you request a ruling on behalf of the *** *** that national banks may purchase shares of stock in a company affiliated with an industry captive insurance company, when such purchase is a condition precedent to the obtaining of insurance from the captive. As discussed below, it is my conclusion that national banks may purchase the stock under the terms and conditions of your proposal, as described in your letter and your February 21, 1990, telephone conversation with Laura H. Plaze, Senior Attorney, Legal Advisory Services Division of the Office of the Comptroller of the Currency (OCC).

The Proposal

As indicated in your correspondence, ***, together with several other *** ***, is co-owner of *** ***, the parent holding company of *** ***, an Oklahoma insurance company. Five of the *** *** formed *** and *** in 1986 in response to the difficulties banks experienced during the mid-1980s in obtaining adequate and affordable director and officers' liability insurance and financial institution bond coverage.

During your conversation with Ms. Plaze, you stated that *** provides insurance only to financial institutions and is generally available to banks only through insurance broker subsidiaries of the owner ***. In ***, *** is available exclusively through ***'s for profit insurance broker subsidiary, *** ***, which was created in late 1988.

Under state insurance law, as explained in your letter, *** must maintain minimum capital equal to 33-1/3 percent of the company's total premiums in force. To meet this capital requirement, the owner *** have agreed to purchase additional *** stock periodically in amounts sufficient to allow *** to maintain capital to support the premiums in force in their respective states. *** downstreams the proceeds from these stock purchases to ***.

*** currently funds its capital obligation to *** by requiring each participating *** bank to extend *** an unsecured, interest-free loan for an amount equal to 40 percent of the bank's insurance premium for the first year. Each bank's loan is repaid through reductions in its renewal premiums over a five-year period, which reductions are funded out of *** commissions earned from ***

*** now proposes to replace this mandatory loan program with a mandatory stock purchase/premium rebate plan. The proposal is intended to reduce the cost of insurance to participating banks, over time, while allowing *** to continue purchasing stock in *** in order to fund ***'s capital requirements

Under the stock purchase part of the plan, each participating bank would be required to purchase Class B common stock of *** at $1,000 per share, in an amount equal to 40 percent of the aggregate amount of the bank's first-year *** insurance premiums. The proceeds of this stock sale would be used to fund ***'s purchase of additional *** stock, as needed, to allow maintenance of ***'s capital. The excess proceeds over the amounts immediately necessary for the *** stock purchase would be reserved for use in the event of minor premium increases that would necessitate ***'s purchase of additional *** stock.

You indicated during you telephone conversation with Ms. Plaze that the Class B stock would be eligible for ownership only by participating banks and would be nontransferrable except with the permission of ***. You explained that *** would permit transfers only in rare instances, such as in the event of a merger where the resulting institution was already a participant. If a bank terminated its *** insurance under other circumstances, *** would simply redeem the bank's stock at $100 per share, the par value. According to your letter, the Class B stock would be nonvoting and assessable on a pro rata basis if necessary to meet additional *** stock purchase requirements. There would be no mandatory new purchases of stock for premium increases. Holders of Class B stock would be eligible to receive cash dividends in the amount of $50.00 per share annually, at the option of the *** board of directors, and would receive stock dividends periodically as shareholders' equity increases.

As described in your letter, the premium rebate part of the proposal would involve the payment of annual rebates, at the option of the *** board, in the form of reduced renewal premiums for participating banks. Depending on the number of renewals by a particular bank, the amount of the rebate would range from 2 percent to 8 percent of the prior year's premium. Participants would be fully vested and eligible to receive the 8 percent rebate as of the fourth renewal. In addition, as of the fifth renewal and for all subsequent renewals, banks would be eligible to receive both the 8 percent rebate and distributions on a pro rata basis from a surplus pool consisting of funds not paid out to partially vested banks

*Note: Interpretive Letters and No Objection Letters reflect the views of the Comptroller's legal staff. Trust Interpretations and Investment Securities Letters reflect the views of the Compliance Management Department

Discussion

[illegible] has determined that *** should [illegible] the [illegible] loan program, with the above-described mandatory stock purchase/premium rebate plan. You have requested that the OCC provide a legal opinion stating that national banks may purchase stock in *** under the plan, notwithstanding the general statutory prohibition against [illegible] stock by national banks. *See* 12 U.S.C. 24(7).

The prohibition against national banks ownig shares of corporate stock is intended to prevent national banks from engaging in speculative activity through stock investment. *See Investment Company Institute v. Camp*, 401 U.S. 616, 630 (1971). On several prior occasions, the OCC has determined that national banks may purchase stock without violating 12 U.S.C. 24(7), where there was no investment motive and where the stock ownership was a condition precedent to, or was intended only to facilitate, a bank's participation in an otherwise permissible activity for which the joint participation of several banks or users was required. *See, e.g.*, Interpretive Letter No. 427, *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 85,651 (May 9, 1988) (stock in Federal Agricultural Mortgage Corporation); Interpretive Letter No. 421, *reprinted in* Fed. Banking L. Rep. (CCH) ¶ 85,645 (March 14, 1988) (stock in corporation that provides services to participants in government securities market); letter dated January 14, 1983, from Peter Liebesman, Assistant Director, Legal Advisory Services Division (unpublished) (membership in nonprofit corporation in order to participate in electronic communications system); letter dated December 19, 1975, from John E. Shockey, Deputy Chief Counsel, (unpublished) (stock in user-owned clearing corporation).

In fact, the *** proposal is similar to a proposal of the ***, another *** co-owner, that was considered by the OCC's Central District Office in 1988. See letter dated June 8, 1988, from James M. Kane, District Counsel, Central District (unpublished). Under the *** program, banks located in *** that wished to obtain *** insurance were required to purchase preferred stock in ***'s for profit subsidiary to fund its obligations to purchase *** capital stock. District Counsel Kane concluded in his letter that a national bank's purchase of the stock was permissible because it was a prerequisite for obtaining [illegible] a legitimate business need of [illegible] that the stock could properly be [illegible]

[illegible]

themselves and their managements. *See* letter dated October 22, 1986, from Richard V. Fitzgerald, Chief Counsel (unpublished) (allowing banks to become policyholders in nonassessable, mutual, nonprofit insurance company formed by ***); letter dated March 13, 1987, from Larry A. Mallinger, Senior Attorney, Legal Advisory Services Division (unpublished) (similar proposal for captive mutual insurance company formed by *** ***). If *** implements the stock purchase/premium rebate plan as proposed, a participating national bank's purchase of stock in *** would be a necessary prerequisite to obtaining *** insurance. Therefore, because the stock ownership would be a condition precedent to a permissible activity, it is my conclusion that a national bank's ownership of *** stock under the proposal would not violate 12 U.S.C. 24(7), provided that there is no underlying investment or speculative motive.

In evaluating whether there is investment or speculative purpose in other stock ownership proposals, the OCC has examined a variety of factors, as presented, on a case-by-case basis. For example, the OCC has viewed restrictions on the transferrability of the stock as evidence of the absence of investment purpose. *See, e.g.*, Interpretive Letter No. 421, *supra*; letter dated February 16, 1989 from William B. Glidden, Assistant Director, Legal Advisory Services Division (stock in user-owned clearing corporation). In cases involving nonprofit corporations, the absence of any anticipated return on equity has also been seen as evidence that there is no investment motive. See Interpretive Letter No. 421, *supra*. However, the OCC has not considered the absence of anticipated return on equity a requirement, nor has the agency limited permissible stock ownership arrangements to situations involving only nonprofit corporations. *See* letter dated June 8, 1988, *supra*, (stock in for profit corporation); letter dated December 19, 1975, *supra* (stock in for profit corporation).

*** is a for profit corporation and the Class B stock to be held by participating banks will be eligible to receive cash and stock dividends. Thus, it is clear that participating banks will have some opportunity to benefit from the stock ownership beyond obtaining access to *** insurance. However, eligibility to receive dividends is a usual attribute of common stock in for profit corporations. As noted above, the OCC has previously allowed national banks to own stock in for profit corporations when such ownership was necessary to facilitate legitimate activity of the bank. In this context, the possibility of receiving dividends on the stock does not, in and of itself, indicate investment or speculative motive for the stock purchase. The possibility of receiving dividends, together with the possibility of receiving the ongoing rebates, may be viewed simply as a means

of reducing insurance costs for participating banks. I also note that the fact that the Class B common stock will generally be nontransferrable, and would be redeemable only at par in the event a bank chose to leave the program, suggests that banks will not be purchasing this stock for investment or speculative reasons.

Based upon the foregoing, it is my conclusion that the stock ownership prohibitions of 12 U.S.C. 24(7) would not apply to a national bank's purchase of common stock in *** under the terms and conditions of your proposal. As in the *** proposal discussed above, the purchase of the stock is permissible under 12 U.S.C. 24(7), and may be viewed as an expense of acquiring the liability insurance.

*** and *** are advised, however, to fully disclose to participating banks the terms and conditions of the stock purchase. In particular, banks should be made aware that if they terminate their *** insurance their stock will be redeemed at par value, which is $900.00 per share less than the purchase price. Each bank should evaluate the benefits of participation against this cost which will be incurred upon leaving the program.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

555 — July 27, 1987

This is in response to your letters of May 14, 1986, and July 25,1986, to the Office of the Comptroller of the Currency, Southwestern District, requesting an interpretation under the lending limit rules. Specifically, you asked whether *** may give immediate credit to an automobile dealer customer, without regard to the lending limit, upon receipt of a draft drawn by the automobile purchaser. Your inquiry was forwarded to the Washington office for consideration.

The facts indicate that the purchasers pay for the automobiles with a draft made to the order of the dealer. The dealer endorses the draft and gives it to the bank. The bank immediately credits the dealer's deposit amount, charging a fee for this transaction and presents the draft to drawee's bank. If the draft is dishonored, the bank returns the draft to the dealer and debits his account. These facts raise the issue of whether or not the giving of immediate credit on uncollected items is an obligation subject to the lending limitations of 12 U.S.C. 84 and its implementing regulation, 12 CFR 32.

This office has stated that paying out on uncollected funds is an extension of credit and, therefore, an obligation within the meaning of 12 U.S.C. 84:

> [A] bank assumes risk by paying against uncollected funds, thereby creating unsecured extensions of credit. . . Moreover, the magnitude of unsecured credit often exceeds the 12 USC 84 limit.

Comptroller's Handbook for National Bank Examiners, Deposit Accounts, section 301.1 (emphasis added).

It is my opinion that the giving of immediate credit on uncollected funds without restrictions is also an extension of credit and, therefore, an obligation within the meaning of section 84. Generally, any transaction by which a bank advances funds to its customers is subject to the limitations of section 84. *See* 12 CFR 32.2(a). When a bank credits a customer's account for the amount of an uncollected item without placing a hold on the account, the bank has given the customer control over bank funds. Essentially, the transaction is the equivalent of crediting a customer's account with the proceeds of a loan in the amount of the uncollected item. Therefore, an obligation for purposes of section 84 arises without regard to existing or resulting balances in the customer's account unless one of the exceptions to the lending limit statute applies.

Prior to its revision in 1983, 12 U.S.C. 84 stated that:

> Obligations in the form of drafts or bills of exchange drawn in good faith against actually existing values shall not be subject under this section to any limitation based upon such capital and surplus.

12 U.S.C. 84(1). Interpretive Ruling 7.1510, 12 CFR 7.1510, implemented this exception. In order to qualify under the ruling, the underlying transaction and the draft had to meet certain requirements, however. First, the office held that Interpretive Ruling 7.1510 applied only to drafts for the sale of commodities. (Opinions issued by this office indicate that the sales of automobiles were considered sales of commodities for purposes of Interpretive Ruling 7.1510). Second, the draft had to be "two name" paper. Under the ruling, where the negotiable instrument was a draft by the seller on the purchaser's bank, the draft had to show that the bank had accepted the draft. Similarly, where a seller issued a draft on the purchaser, payable through the purchaser's bank, the draft had to show the purchaser's acceptance. In both situations, two parties

[illegible] through the instrument the seller and either his [illegible] bank (where the draft was on the bank) or the purchaser (where the draft was on the purchaser payable through his bank).

The revisions of 12 U.S.C. 84 eliminated this exception, however. Similarly, Interpretive Ruling 7.1510 was also deleted. Therefore, it is my opinion that the giving of immediate credit on uncollected items is an obligation under 12 U.S.C. 84 and not subject to any of the statute's present exceptions.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

556 — August 6, 1991

I am writing in response to your letter and subsequent fax and telephone communications with yourself and Mr. *** of your firm concerning your request for a no objection letter from the OCC regarding a transaction into which your client (the bank), an unnamed national bank, proposes to enter. As we have discussed, we are unable to issue a no objection letter.

The bank plans to participate on an equity basis in the leveraged lease financing of an undivided interest in coal-fired electric power generation facility (the Facility Lease Financing). In the transaction as originally described, the bank would have acquired some assets — certain fixtures and a leasehold estate — classified as real estate under state law.

In subsequent correspondence, Mr. *** indicated that local counsel has advised you that the fixtures may be characterized as personal property under state law. Thus, the permissibility of the bank's ownership of the fixtures is no longer in question. Ownership of the leasehold estate initially presents the issue of whether the restrictions on national banks' ownership of real estate in 12 U.S.C. 29 prevent the bank from entering into the proposed lease financing. You have indicated that the bank must own the leasehold estate contained in this transaction for tax purposes. For the reasons discussed below, it is my opinion that it would be impermissible for the bank to own the leasehold estate.

The facts are as follows. The bank intends to acquire [illegible] interest (the Facility Undivided Interest) in a [illegible] power generation facility (the Facility) [illegible] the Facility Undivided Interest to [illegible] that is a bank customer. [illegible] presently own the Facility as tenants in common. The majority owner currently operates the Facility under an operating agreement. The bank will own an 8 percent undivided interest in the Facility Undivided Interest. The other three participants in the transaction are utility companies. Ownership of the Facility Undivided Interest will be divided among the participants in the following percentages: 64 percent, 20 percent, 8 percent, and 8 percent.

The transaction will be structured as follows. At the closing of the transaction, the bank will establish a grantor trust in accordance with a trust agreement with a trustee (the Owner Trustee) of which it will be the sole beneficiary. Also at this time, the bank will contribute 15 percent of the cost of the Facility Undivided Interest to the trust as its equity investment. The remaining 85 percent of the cost will be funded by institutional lenders who will purchase non-recourse notes (the Notes) issued by the Owner Trustee. Title to the Facility Undivided Interest will be transferred to the Owner Trustee by a bill of sale. The Lessee will then lease its undivided interest (the Site Undivided Interest) in the site upon which the Facility is located (the Site) to the Owner Trustee under a ground lease (the Ground Lease). The Owner Trustee will then lease the Facility Undivided Interest and sublease the Site Undivided Interest back to the Lessee under a lease (the Lease), which has an initial term (the Lease Term) of 27½ years. During the Lease Term, the respective rent payments due under the Ground Lease and the Lease will offset one another.

The Notes will be secured by a trust indenture and mortgage (the Indenture) to a bank or trust company (the Indenture Trustee) for the benefit of the Note holders. The security under the Indenture will include: the Facility Undivided Interest, the Owner Trustee's ground leasehold interest in the Site Undivided Interest, and the Owner Trustee's rights under the Lease.

If the Lessee is not in default on the Lease at the end of the Lease Term, then the Lessee has the option either to renew the Lease or to purchase the Facility Undivided Interest. If the Lessee does not exercise its options, then the bank will attempt to dispose of the Facility Undivided Interest much in the same way that a bank disposes of property acquired in collection of a debt previously contracted. If the bank cannot sell its interest in the Facility Undivided Interest, you indicated in a telephone conversation that the Lessee would pay the bank a balloon payment for the bank's residual interest.

In accordance with 12 CFR 7.3400, which is discussed in more detail *infra*, the Lease is net and full payout. Thus, as long as the Lease is in place and the Lessee is performing thereunder, neither the Owner Trustee nor

the bank would have any responsibilities with respect to either the Facility Undivided Interest or the Site Undivided Interest. During the Lease Term, the Lessee will pay the Owner Trustee in rent an amount sufficient to cover the Owner Trustee's Note payments and the bank's return on funds committed to the Facility Lease Financing. The Lessee will have responsibility for maintaining and repairing the Facility, paying all taxes on the Facility Undivided Interest, insuring the Facility, complying with all governmental regulations applicable to the Facility, and paying all rents due and performing all obligations arising under the Ground Lease.

The particular structure of this transaction was selected for two reasons. First, the bank's customer determined that this transactional structure will provide financing at the lowest possible cost. Second, by owning the lease, the bank will be treated as the owner of the Facility Undivided Interest for federal income tax purposes, in which case it will receive certain federal income tax benefits, such as depreciation deductions, that are a major component of its expected rate of return on the funds it will commit to the transaction.[1]

You indicate that the facility items to be owned beneficially by the bank pursuant to this arrangement are considered personal property under the law of the state in which the Facility is located. However, the leasehold interest in the Site Undivided Interest (the Leasehold Estate) the bank would acquire is considered real estate under state law.[2] As you note in your letter, it is the bank's ownership of the Leasehold Estate that raises the issue of the 12 U.S.C. 29 limitations on national bank ownership of real property.

At the outset, it can be noted that the personal property leasing aspects of the Facility Lease Financing are permissible. National banks have the authority to own and lease personal property to their customers under certain conditions. *M&M Leasing Corp. v. Seattle First National Bank* 563 F 2d 1377 (9th Cir 1977) (hereinafter *M&M Leasing*). *cert denied* 436 U.S. 956 (1978). In this case, the court reasoned that under certain circumstances "leasing . . . constitutes a loan of money secured by the leased property . . . ." *Id* at 1382. The court concluded that a lease is the functional equivalent of the loan of money secured by the personal properties leased.

The OCC originally codified the conditions stated by the court in *M&M Leasing* in 12 CFR 7.3400. This regulation provides that national banks may legally or beneficially engage in the lease financing, including leveraged lease financing, of personal property, provided that such leases are net and full-payout.[3] *See* 12 CFR 7.3400. These requirements are present in the OCC's recently published final lease financing regulation, which became effective July 22, 1991. See Final Rule: Lease Financing, 56 Fed. Reg. 28,314, at 28,317 (June 20, 1991). *See also* Notice of Proposed Rulemaking: Lease Financing Transactions, 54 Fed. Reg. 53,071, at 53,076-78.

In your letter, you indicated that the transaction is structured to comply with both the OCC's current lease financing regulation, 12 CFR 7.3400, and the OCC's Final Rule: Lease Financing Transactions, 56 Fed. Reg. 28,314 (June 20, 1991). These regulations permit national banks to engage in the lease financing of personal property. They do not, however, permit national banks to engage in the lease financing of real property.

Congress enacted 12 U.S.C. 24(Tenth) to provide additional authority for national banks "to invest in tangible personal property . . . for lease financing transactions . . . ." Yet, in enacting this authority for national banks to engage in the leasing of personal property, Congress did not enact any authority for national banks to engage in the leasing of real property. This suggests that national banks do not have the authority to engage in the lease financing of real property.

As you know, the authority for national banks to purchase, hold, and convey real estate is limited to those

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[1] Your letter states that in order for the bank to be treated as the owner of the Facility Undivided Interest, the Facility Undivided Interest must not be considered "limited use property" under certain Internal Revenue Service guidelines. The Facility Undivided Interest will generally not be considered limited use property if the bank (or any other party unrelated to the Lessee) can operate its interest in the Facility in a commercially feasible manner at the end of the Lease Term. As such, the bank must have the support rights necessary to operate its interest in the Facility in a commercially reasonable manner. This means that it is necessary for the bank to have the right to enter onto the Site to operate its interest. Thus, the bank must own the lease to achieve the federal income tax treatment it seeks as part of its overall return on its investment.

[2] It is the policy of the OCC to look to the characterization of property in accordance with relevent state law in applying the federal law applicable to the holding of such property by national banks. Letter from Stephen Brown, Attorney (August 20, 1990); letter from Kenneth Leaf, Chief National Bank Examiner (July 14, 1975).

[3] A net lease is one under which the lessee has all obligations to maintain, insure, and, if needed, register the property. 12 CFR 7.3400(b)(1). A full pay-out lease is one under which the bank can reasonably expect to realize a return on its full investment [illegible] the cost of financing, through rentals, estimated tax benefits and the residual value of the property, provided that for the purposes of calculating such a return, the bank may not rely on [illegible] percent of the original cost of the property [illegible] section 7.3400(b)(2). See also Final Rule: Lease Financing, 56 Fed. Reg. 28,314, at 28,317-28,318 (June 20, 1991).

[illegible] and no others. Twelve [illegible] in pertinent part that

[illegible] banking association may purchase [illegible] convey real estate for the following purposes, and for no others

[illegible] Such as shall be necessary for its accommodation in the transaction of its business

Second Such as shall be mortgaged to it in good faith by way of security for debts previously contracted

Third Such as shall be conveyed to it in satisfaction of debts previously contracted

Fourth Such as it shall purchase at sales under judgements, decrees, or mortgages held by the association, or shall purchase to secure debts due to it

(Emphasis added.) Leasehold interests, such as the Leasehold Estate, are within the scope of this limitation on national banks' ownership of real estate. *See* OCC Interpretive Letter No 491, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep (CCH) ¶ 83,074 at 71 185 (September 6, 1989).

The object of the restrictions [in 12 U.S.C. 29] was obviously threefold. It was to keep the capital of the banks flowing in the daily channels of commerce to deter them from embarking on hazardous real estate speculations, and to prevent the accumulation of large masses of such property in their hands, to be held, as it were, in mortmain.

Union National Bank v Matthews, 98 U.S 621, 626 (1878).

It follows logically from the restrictive language of 12 U.S.C. 29 that a national bank may not engage in the general business of leasing real estate Letter from [illegible] Senior Deputy Comptroller for Bank [illegible] (July 12, 1982) "[N]ational banks are not permitted to lease real property The Federal statute 12 U.S.C. [illegible] national bank ownership of real property [illegible] the holding of real property [illegible]" See Letter from John D [illegible] Comptroller of the Currency (November [illegible] I believe that it [illegible] the [illegible] to hold the [illegible]

[illegible]

estate involved in the Facility Lease Financing is ancillary to the personal property that the Bank will lease finance." Although the real property contained in the Facility Lease Financing may be a small part of the entire transaction and may be ancillary in purpose, the limited authority granted to national banks in 12 U.S.C. 29 to purchase, hold, and convey real estate provides no *de minimis* exception for such situations *See* OCC Interpretive Letter No. 435, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,659 (June 30, 1988)

As you note in your letter, 12 U.S.C. 29 does not expressly permit national banks to own real estate as mortgagees to secure concurrent or future indebtedness. *See Woods v. Peoples Nat'l Bank*, 83 Pa. 57 (1876). National banks have this authority by 12 U.S.C. 371(a). *See First Nat'l Bank of Guthrie Center v. Anderson*, 269 U.S 342 (1926). Twelve U.S.C. 371(a) states that

[a]ny national banking association may make, arrange, purchase or sell loans or extensions of credit secured by liens on interests in real estate, subject to such terms, conditions, and limitations as may be prescribed by the Comptroller of the Currency by order, rule, or regulation.

First Nat'l Bank of Guthrie Center indicates that 12 U.S.C. 371(a) partially withdrew the prohibition against national banks' engaging in making loans on real estate. While 12 U.S.C. 371(a) does permit national banks to own real estate as mortgagees to secure an indebtedness, 12 U.S.C. 29 continues to limit national bank ownership of real estate to those purposes stated therein and no others. Twelve U.S.C. 371(a) only permits national banks to make, arrange, purchase, or sell loans or extensions of credit secured by liens on interests in real estate. This section does not permit national banks to acquire real property for the purpose of leasing it to customers.

As you have indicated, Congress amended 12 U.S.C. 371(a) in the Garn-St Germain Depository Institutions Act of 1982. The amendment

simplifies the real estate lending authority of national banks by deleting rigid statutory limitations Section 403 is intended to provide national banks with the ability to engage in more creative and flexible financing, and to become stronger participants in the home financing market

See The Garn-St Germain Depository Institutions Act of 1982 Pub L No 97-320, section 403, 96 Stat 1469 [illegible] S Rep 536 97th Cong 2d Sess [illegible] *reprinted in* 1982 U.S. Code Cong & Admin News [illegible] The amendment simplified the formerly

lengthy and complex. 12 U.S.C. 371(a). The amendment, however, did not give national banks the authority to lease finance real property.

You have also noted that, under the authority of 12 U.S.C. 371(a), the OCC permits national banks to take title to real estate under land contracts when the purpose of the transaction is to extend credit. *See* OCC No Objection Letter No. 86-2, *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,008 (February 25, 1986). You believe that, under a similar functional analysis, the bank may own the Leasehold Estate in the Facility Lease Financing.

Under the authority granted to it in 12 U.S.C. 371(a), the OCC deems a land contract to be either a purchase of a loan or an extension of credit secured by liens on interests in real estate, both of which are expressly permissible under this statute. The land contract represents evidence of the vendee's debt. *See* letter from Thomas G. DeShazo, Deputy Comptroller of the Currency (August 7, 1968). "In receiving a warrenty deed to this land, the bank is merely attempting to strengthen its position rather than illegally purchasing a parcel of real estate." *Id.* "[S]ince . . . [a land contract] is structured as a credit taking transaction, it does not violate 12 U.S.C. 29, and is considered within the business of banking." OCC No Objection Letter No. 86-2, *supra.*

Such treatment is not accorded to leases because leases are not similar to land contracts. In a lease situation, the lessor merely gives up its present right to possession in return for some fixed consideration, yet in the land contract situation, the selling bank agrees to give up all present and future rights of possession and to transfer title at a fixed date. *See* letter from Charles F. Byrd, Assistant Director, Legal Advisory Services Division (December 16, 1980). At the end of the land contract, title to the property automatically transfers to the "purchaser." The bank need not take any independent action to implement that transfer. In the proposed lease arrangement, if the Lessee does not exercise its option to acquire title to the property the bank must initiate steps to dispose of the property. It is this fundamental difference that distinguishes a land contract from your proposal.

Finally, you have also argued that the bank's activities should be permitted because they are incidental to the bank's express power under 12 U.S.C. 371(a) to take a security interest in real property. However, the OCC does not recognize such leasing as an incidental power under 12 U.S.C. 371(a) because of the limitations on national banks' ownership of real estate in 12 U.S.C. 29. Since the limitations contained in 12 U.S.C. 29 on national banks' ownership of real property preclude the bank's activities, it is unnecessary to further consider this incidental powers argument.

For the above reasons, it is my opinion that the limitations on a national bank's ownership of real estate contained in 12 U.S.C. 29 prohibit the bank from owning the leasehold estate contained in the Facility Lease Financing through a bank service corporation. The Bank Service Corporation Act, 12 U.S.C. 1861-1867, authorizes bank service corporations to engage in any activity that the Federal Reserve Board has determined, by regulation, to be permissible for a bank holding company under 12 U.S.C. 1864(f). The Federal Reserve Board has, in Regulation Y, determined that the lease financing of real estate is a permissible activity for bank holding companies. 12 CFR 225.25(b)(5). However, prior to conducting this activity in a bank service corporation, the bank would need to obtain approval from the Federal Reserve Board. *See* 12 U.S.C. 1865(b) and 12 CFR 5.35(e)(1)(B).

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

557 — August 8, 1991

This is in response to your inquiry regarding the application of 12 U.S.C. 84, the lending limit, to an advance of funds by the subsidiary banks of *** (the banks) to pay the operating expenses of a resort property that secures an obligation held by the banks. The obligation arose when the banks issued a standby letter of credit on the borrower's behalf to guarantee payment of another institution's loan to the borrower. When the borrower defaulted, the banks were compelled to fund the letter of credit. The parcel of real estate in question was pledged to the banks as security for their loan.

You have indicated that the banks have not actually foreclosed on the resort property; however, the banks' loan has been deemed an in-substance foreclosure under accounting rules.[1] Consequently, the property

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[1]See e.g., AICPA Practice Bulletin [illegible]

A creditor should consider collateral [illegible] foreclosed if all of the following [illegible]

1. The debtor [illegible]
ing the current [illegible]

Proceeds [illegible] repayment of [illegible]

must be classified as Other Real Estate Owned (OREO) in accordance with the rules pertaining to in-substance foreclosure contained in AICPA Practice Bulletin 7, the call report instructions and the *Comptroller's Handbook for National Bank Examiners.*[4] You have inquired whether this accounting treatment has an impact on the extent to which the proposed advances would be considered an additional loan to the borrower, subject to the lending limit, 12 U.S.C. 84, or an expenditure on OREO property subject to the separate provisions of 12 U.S.C. 29.

In general, the lending limit applies to "loans and extensions of credit" including "all direct and indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person. . . ." 12 U.S.C. 84(b) (1). We understand that in this instance, the banks are relying upon the sale of the resort property which was pledged as the sole means to recover funds they originally extended on the borrower's behalf and any future advances they may make to pay the operating expenses of the property. The funds extended by the banks clearly fall within the scope of the definition of a loan contained in 12 U.S.C. 84(b) (1).

In accordance with case law, the OCC has concluded that advances of funds, including advances to protect the value of a bank's collateral, are subject to the lending limit. *See Federal Deposit Insurance Corporation v. Mapp's Executor*, 37 S.E.2d 23 (Va. 1946) (purchase of judgment lien to protect the bank's collateral held to be an additional loan to the borrower where title to realty did not pass to the bank). The OCC has specifically stated that "the advancement of additional funds in excess of the limitation of section 84 would constitute a lending limit violation regardless of whether the loan might arguably protect the bank." OCC Interpretive Letter No. 292 (June 20, 1984), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,462. *See also* letter from Stephen R. Steinbrink, Director of Regional Banks, Southwestern District (November 8, 1989) (unpublished) (payments for the purpose of satisfying taxes, insurance premiums, prior liens and other adverse claims to protect value of collateral are subject to the lending limit, whereas such payments with respect to property on which bank has previously foreclosed are not regarded as loans); letter from Thomas G. DeShazo, Deputy Comptroller of the Currency (June 19, 1975) (unpublished) (where a bank simply purchases prior liens without acquiring title to the property, the funds expended will be considered an extension of credit subject to 12 U.S.C. 84).

By contrast, the lending limit does not apply to a bank's expenditures on property that it has acquired as OREO. Under 12 U.S.C. 29, which discusses the power of national banks to purchase, hold, and convey real estate, a national bank may, upon notification to the OCC, expend funds for the development and improvement of OREO property in its "possession" as is necessary to enable the bank to recover its investment. *See* 12 U.S.C. 29. The OCC's implementing regulation defining OREO property states in pertinent part:

> (a) "Other real estate owned" is:
>
> (1) Real estate acquired by a national bank:
>
> (i) Through purchases at sales under judgements, decrees, or mortgages where the property was security for debts previously contracted;
>
> (ii) Through conveyance in satisfaction of debts previously contracted; or
>
> (iii) Through purchases to secure debts previously contracted.

12 CFR 7.3025(a) (1) (emphasis added)

The OCC's regulations governing OREO property reiterate that funds may be expended to complete an unfinished construction project that a bank has acquired. *See* 12 CFR 7.3025(j). Further, the regulations permit a bank to pay off encumbrances on real estate that a bank has acquired where the bank's interest in the property is sufficient to justify the expenditure. *See* 12 CFR 7.3020(b). Moreover, the courts have long held that once a bank has acquired property pursuant to its express power to collect its debts, a bank may expend additional funds to operate an "establishment whose

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3. The debtor has either

(a) formally or effectively abandoned control of the collateral to the creditor, or

(b) retained control of the collateral but, because of the current financial condition of the debtor or the economic prospects for the debtor and/or the collateral in the foreseeable future, it is doubtful that the debtor will be able to rebuild equity in the collateral or otherwise repay the loan in the foreseeable future.

[4] [illegible] for Determining Whether Collateral for a Loan Has Been In-Substance Foreclosed, Practice Bulletin No. 7 (Am. Inst. of Certified Public Accountants 1990). [illegible]

value depends substantially upon uninterrupted operation." *See Atherton v. Anderson* 86 F.2d 518, 525 (6th Cir. 1936), *rev'd on other grounds*, 302 U.S 643 (1937). *See also* OCC Interpretive Letter No. 12 (December 7, 1977), *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,087 (bank permitted to make necessary advances to preserve value as a going concern of a business upon which it has foreclosed); letter from John P. Sherry, Regional Counsel (March 3, 1977) (unpublished) (bank may operate a theatre, bowling alley, three bars, a grill, steakhouse, convention hall and motel which it has acquired through foreclosure until sale is arranged). These expenditures do not constitute loans to a borrower which are subject to the lending limit, but instead, are considered money spent by the bank on its own property.

We note, however, from your description of the facts that in this instance, the banks cannot be said to have acquired the resort property. The property has not been "conveyed" to the banks or "purchased" by the banks in any manner specified in 12 CFR 7.3025. You have also informed us that the banks do not intend to foreclose upon this property because of the difficulty of initiating foreclosure proceedings in the jurisdiction where the property is located. Instead, the banks are simultaneously attempting to sell the borrower's obligation to another institution, and are also assisting the borrower to find a purchaser for the resort property.

Therefore, we must conclude that although accounting and reporting rules may require that the loan in question be regarded as foreclosed, and the corresponding resort property be classified as OREO, the property in question cannot be considered OREO for the purposes of 12 U.S.C. 29 and 7.3025. Rather than being expenditures on property acquired by the banks to which 12 U.S.C. 29 would apply, these advances give rise to additional obligations of the borrower which constitute "loans and extensions of credit" under 12 U.S.C. 84. *Cf.* Letter from William Glidden, Assistant Director, Legal Advisory Services Division (July 26, 1990) (unpublished) (where borrower has continued to satisfy obligations under loan contract, but loan has been classified as "in-substance foreclosure," a new advance of funds under the contract is subject to the lending limit.)

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

558 — April 3, 1991

This is in regard to your letter on behalf of *** concerning certain of the trust interpretations by the Office of the Comptroller of the Currency (OCC) relating to the use by national bank trustees of mutual fund products and related services. In particular, you have requested review of certain trust interpretations (Trust Interpretations Nos. 222, 230, 233, 234, and 237). In your letter, and in a meeting with OCC staff, you have requested the OCC to review the interpretations as they may restrict certain marketing and product packaging practices that have been developed by a number of mutual fund sponsors in offering services to banks. Specifically, you referred to circumstances in which bank trustees may receive computer services, travel expenses related to seminars, and rebates, discounts or other financial benefits related to the sponsor's marketing or the bank trustee's purchase of mutual fund shares.

In addition, you have requested the OCC to review interpretations that may affect the ability of a bank to purchase mutual funds as trustee when the bank serves as investment adviser to the fund. In particular, you have requested review of interpretations that may restrict the ability of a bank to offer proprietary or "private label" funds advised by the bank to both discretionary trust customers and nondiscretionary customers.

***[1].

With respect to these areas of concern, *** believes that the above OCC interpretations may have erroneously applied principles regarding the duty of loyalty under trust law and departed from the policy of deferral to local law reflected in the OCC's trust regulation (12 CFR 9). In your view, the interpretations *per se* prohibit a national bank trustee from receiving certain products or services from the fund manager or sponsor. You have noted that the duty of loyalty under principles of trust law followed by the states does not preclude a local court of equity from granting an exception for or confirming certain transactions that might be deemed disloyal.

As an alternative to the interpretations, *** proposes that the OCC issue a policy statement or other agency release providing a set of guidelines that would recommend the establishment and adoption of certain internal code provisions by national banks for their trust department governing the investment of trust assets. The policy statement would require banks to monitor their trust activities in accordance with the policy state-

Footnote number 1 [illegible]

[illegible] for OCC examination of such [illegible] a "safe harbor" for certain [illegible] of concern to ***.

Legal Analysis

A. Authority of OCC Regarding National Bank Trust Activities.

Although the Comptroller has authority pursuant to 12 U.S.C. 92a to impose restrictions on national bank fiduciary activities in addition to local law,[2] the Comptroller generally has the authority to defer to local law in regulating national bank trust activities.[3] The policy of the statute is to defer to state law to advance competitive equality between national banks and state-chartered trust institutions, subject to certain limitations established by Congress and the Comptroller's regulatory authority.[4]

The OCC's self-dealing regulation, which reflects the duty of loyalty, defers to local law. The regulation permits self-dealing transactions that are "lawfully authorized by the instrument creating the relationship, or by court order or by local law." 12 CFR 9.12(a). Otherwise, as relevant to the mutual fund relationships of interest to ***, the regulation defines as a prohibited self-dealing transaction the investment of funds held by a national bank as fiduciary in stock or obligations of organizations:

> in which there exists such an interest, as might affect the exercise of the best judgment of the bank in acquiring the property . . . .

The OCC has received a number of requests for opinions concerning the permissibility of certain practices by national bank trustees under the above regulation. In accordance with longstanding OCC practice, the staff have considered these requests and have provided written staff interpretations to the requesters on a case-by-case basis. The interpretations represent opinions of the OCC staff and are not themselves regulations.

The issuance of the interpretations represents a valid exercise of the authority of the Comptroller, which Congress has charged with the responsibility to enforce 12 U.S.C. 92a and adopt regulations, and to provide opinions concerning the application of the statute and its trust regulation in response to inquiries from national banks.[5]

The OCC makes the interpretations available to banks, examiners and other interested members of the public for the purpose of indicating how the OCC has previously responded in other individual cases. It should be noted that a national bank is not discouraged from distinguishing its circumstances factually or under local law. The interpretations may or may not be persuasive with regard to distinguishable factual situations.

B. Consistency of OCC Trust Interpretations with OCC Implementing Regulations.

The individual staff interpretations you have cited have been reviewed for consistency with 12 CFR 9.12.

Trust Interpretation 222 (Travel to Seminars).

Trust Interpretation 222 (June 21, 1989) responded to a request for advice on the permissibility of a bank trustee receiving travel expenses paid for by investment company managers in connection with seminars offered by, or at the direction of, the investment company managers. The requester noted that the receipt of these benefits by bank trustees would not be contingent upon the investment of trust assets in a particular fund.

The OCC staff opined that the duty of loyalty in 12 CFR 9.12 does not arise only in situations where the receipt of benefits would mandate specific investments by the trustee. Rather, the standard to be applied is whether

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[2] Federal statutory provisions governing national bank trustees may preempt less restrictive local law in specific areas. *See* 12 U.S.C. 92a(a), (c), (d) and (h). In addition, Congress authorized the Comptroller to grant, deny, or revoke fiduciary powers and to regulate national banks' exercise of powers permitted by the statute and granted by the Comptroller. 12 U.S.C. 92a(a), (j). Under these provisions, national bank trust powers do not automatically equate to those of state-chartered competitors.

[3] The federal statute providing for national bank fiduciary powers reflects a policy decision to enhance competitive equality between national and state chartered banks, by authorizing the Comptroller to grant [illegible] trustee [illegible] any other fiduciary capacity in which State banks, trust companies, or other corporations which [illegible] with national banks are permitted to act under [illegible] in which the national bank is located. 12 U.S.C. [illegible] national banks with trust powers [illegible] competitive inequity [illegible] state legislatures [illegible] *See Scott on Trusts* [illegible] pp. 33-34 [illegible]

[4] [illegible]

[5] The Comptroller is charged with the comprehensive administration of [illegible] aspects of national banking under the national banking laws [illegible] entitled to deference with regard to reasonable interpretations of these laws. *Securities Industry* [illegible] *cert. denied* [illegible] *Chevron U.S.A.* [illegible] v. *Natural Resources Defense Council* [illegible] (1984).

the receipt of the benefits would create such an interest as "might affect the exercise of the best judgment" of the bank in acquiring or retaining investments in the fund.

Upon review, Interpretation 222 appears to be consistent with 12 CFR 9.12. As noted, the Comptroller's regulation reflects the trustee's duty of undivided loyalty. A trustee owes a duty to beneficiaries to administer the affairs of the trust solely in the interests of the beneficiaries, and to refrain from placing itself in a position where its other interests *do or may conflict* with the interest of the beneficiaries.[6] The priniciple is preventive in nature, requiring the trustee to avoid such positions.[7]

Thus, the fiduciary obligations of banks to customers who place trust funds under their management dictate that trustees should not place themselves in a position where they would benefit from violating a duty to the beneficiaries. *See Scott on Trusts*, Vol. IIA, 170 (Duty of Loyalty). Accordingly, even if financial benefits are not received in exchange for the investment of fiduciary assets in particular investments, the receipt of such benefits may still be violative of 12 CFR 9.12. The acceptance of financial incentives that may adversely affect the trustee's ability to make investment decisions based exclusively on the best interests of its trust customer constitutes a violation of 12 CFR 9.12(a). All-expense-paid travel offered by a mutual fund sponsor to a bank may provide the type of financial incentive that conflicts with undivided loyalty to the trust customer in choosing investments.

Absent establishment of one of the exceptions to section 9.12 based on the trust instrument, local law, or court order, a national bank has the obligation to show both that a financial benefit is not contingent on investment in a particular fund and that the financial benefit could not affect the ability of the bank trust department to make investment decisions based exclusively on the best interests of its trust customer. No such showing was made.

Trust Interpretation 230 (Computer Services and Seminar Travel and Entertainment).

Trust Interpretation 230 (August 11, 1989) responded to a request for the staff's opinion with regard to the applicability of section 9.12 to a national bank's acceptance of expenses for travel and entertainment in connection with seminars and computer services from investment companies.

Under the facts presented, the bank would accept computer hardware and software to automatically transmit purchases and redemptions and to retrieve current and historical portfolio and performance data concerning mutual funds being used for fiduciary and non-fiduciary customers. Thus, the computer benefits would be contingent on investment in a particular fund or family of funds. In addition, a bank might be offered an invitation to an all-expense-paid seminar, including travel, lodging, meals and entertainment for the purpose of either meeting with current portfolio managers of trust funds or to receive information about the types of services and products offered by the firm and to introduce the firm's management. Thus, it appeared the payment of expenses would either be contingent on investment or may be for the purpose of marketing a particular fund complex. The staff concluded these arrangements would fall within 12 CFR 9.12.

Upon review, Interpretation 230 also appears to be consistent with 12 CFR 9.12. As noted, the acceptance of a financial benefit contingent on investment in a particular fund is violative of the regulation. In addition, travel and entertainment in connection with seminars offered to introduce the bank to a fund could also have an adverse effect on the ability of the bank trustee to make investment decisions based exclusively on the best interests of its trust customer in violation of the regulation. The requester did not propose any limitations that might alleviate concerns as to the requirement of or influence on particular investments as a result of the benefits. Nor did the requester provide a basis for concluding an exception would be available.

Trust Interpretation 233 (Computer Services and Seminar Travel).

Trust Interpretation 233 (September 1, 1989) responded to a request for the staff's opinion as to whether the duty of loyalty is implicated by the receipt by a national bank of all expense paid trips to seminars offered by mutual fund sponsors and micro-computers, and computer software used to connect the trust division and mutual funds. The requester noted that the mutual fund providing the benefits would not specifically require the trust division to invest a specified amount in the mutual fund in exchange for the benefits. The question presented — applicability of section 9.12 — was essentially the same as the questions addressed in Trust Interpretations 222 and 230. The staff concluded that 12 CFR 9.12 would apply. Upon review, we believe the interpretation was consistent with 12 CFR 9.12 for the reasons discussed above with respect to Trust Interpretations 222 and 230.

[6]Bogert, George, *Trusts* (6th ed. 1987), 95, p. 341. *See also Restatement, Trusts, Second*, 170,206

[7]Bogert, George, *Trusts* (6th ed. 1987), 95, pp. 341-43. *Scott on Trusts* Vol. IIA, 170, p. 311

Trust Interpretation 234 (Placing Fiduciary Assets in Bank-Advised Funds)

Trust Interpretation 234 (September 21, 1989) responded to a bank's request for an opinion that 12 CFR 9.12 would permit the bank to place both trust assets and non-discretionary funds in a mutual fund for which the bank served as investment advisor, provided the bank waived its investment advisory fee as to the bank's trust customers.

In the staff's view, however, fee waiver would not eliminate the interest of the bank in the fund that might affect the exercise of the bank's best investment judgment on behalf of trust customers. Fee waiver addresses the interest of the bank in the form of the investment advisor fee it might receive from trust assets, since the advisory fees paid to the bank, based on the asset size of the fund, generally would increase if the bank invested trust assets. Notwithstanding the fee waiver, however, the bank's interest in a mutual fund as advisor might affect the bank's exercise of best judgment concerning trust investments. A conflict of interest arises when a bank trustee's duty to make investment decisions based exclusively on the best interests of trust customers is compromised or clouded by the potential for receipt of collateral benefits. For example, a bank may be tempted to invest discretionary funds in the mutual funds in order or provide the minimum investment necessary to warrant the mutual fund's establishment and maintenance and thereby receive an advisory fee with respect to non-discretionary funds. Moreover, a bank may be influenced to invest discretionary funds as a means of maintaining the contractual arrangement to act as investment advisor. A bank also may be tempted to make or maintain trust investments in the fund under adverse conditions, for example, to provide liquidity to honor redemption requests from non-discretionary customers. The bank did not address these potential conflicts or establish that an exception would be available. The staff opined that the bank's investment of trust assets in the fund would fall within the restrictions in 12 CFR 9.12, unless a local law or other exception could be established.

Upon review, we believe Interpretation 234 was consistent with the 12 CFR 9.12 and did not depart from the policy of the regulation to defer to local law. In this regard, we note that the staff's letter provided advice to the bank of various means by which authorization for the trust investment could be obtained, including a [illegible] could be established by the bank.

Trust Interpretation 207 (Receiving Sub-Transfer Agent Fees for Placing Fiduciary Assets in a Fund)

Trust Interpretation 207 ([illegible] 1989) requested an opinion concerning an arrangement whereby a national bank would receive sub-transfer agent fees as a result of investing fiduciary assets in a particular mutual fund. In the opinion of OCC staff, under the facts provided the arrangment could be viewed as falling within 12 CFR 9.12. It appeared the bank would be producing insignificant services as a designated sub-transfer agent and, thus, most sub-transfer agent fees would represent compensation for the investment decision to place fiduciary assets in a particular fund. OCC staff consulted with the Department of Labor concerning the arrangement under the Employee Retirement Income Security Act (ERISA), which would govern ERISA accounts. Staff of that agency believed the arrangement would also be viewed as a possible prohibited transaction pursuant to section 406 of ERISA.

Upon review, the interpretation appears consistent with 12 CFR 9.12 under the facts given. While there may be circumstances in which the sub-transfer agent fees would not present a potential conflict, the interpretation clearly indicated that the opinion was limited to the facts of the particular arrangement. Moreover, it was noted that no information had been provided to establish a basis for an exception to 12 CFR 9.12.

Based on the foregoing, we are unable to conclude that the staff misconstrued the duty of loyalty reflected in the OCC regulation or failed to defer to local law.

Proposed Policy Statement Recommending Internal Code Provisions.

We also have considered the request by *** that the OCC issue a policy statement recommending certain internal code provisions for national bank trust departments governing the investment of trust assets and the duty of loyalty.

It is the responsibility of the board of directors of a national bank to ensure ongoing compliance with these requirements placed on the exercise of fiduciary powers to the bank. 12 CFR 9.7(a)(1). Moreover, a national bank operating under a trust permit is required by Part 9 to retain legal counsel that will be readily available to advise the bank and its trust department concerning matters of fiduciary law. 12 CFR 9.7(c).

Thus, as a general matter, the OCC endorses the practice by banks of establishing internal policies and procedures in trust departments to monitor potential disloyal transactions and to bring these to the attention of trust counsel for prior review. These policies and procedures should be adequate to alert trust department employees to the duty of loyalty as it pertains to the matters addressed in this letter relating to receipt of

computer services, seminars, discounts, advisory fees or other financial benefits related to sponsor's marketing or the bank trustee's purchase of investment company shares and the need to refer such matters to trust counsel prior to accepting such benefits.

In this regard, the bank should be able to demonstrate and maintain documentation reflecting the bank's prior review, with appropriate consultation with its trust counsel, of practices that may present issues relating to the scope of the bank's authority. For example, where a national bank is relying on a local law exception to authorize a transaction that otherwise would fall within the 12 CFR 9.12, the bank should be able, on examination, to readily and clearly establish the applicability of the local law that authorizes the transaction and demonstrate that the bank concluded its analysis before engaging in the transaction.

However, we are unable to endorse the draft policy and guidelines and sample code provisions you have provided, due to inconsistency of some of the provisions with duty of loyalty principles reflected in 12 CFR 9.12. In particular, we are unable to authorize a bank to engage in a transaction falling within 12 CFR 9.12 based on the bank's own assessment of its good faith, fair return or the best interests of beneficiaries, or similar criteria, absent a showing that local law, the trust instrument or a court order lawfully authorized the transaction.

The duty of loyalty, as noted, requires the trustee to refrain from obtaining an interest that might affect the bank's ability to act on behalf of trust beneficiaries. The trustee generally is not permitted to engage in self-dealing on the basis of the trustee's assessment of such considerations as the good faith of the trustee or the effect of the trustee's conduct on the beneficiary or benefit to the trustee.[8] The law presumes that the interest of the trustee in the transaction renders the trustee incapable of making this assessment objectively and thus "forbids the disloyal transaction and does not consider its actual merits or effects . . . ."[9] The court noted in *Wachovia Bank and Trust Company v. Johnston*, that:

> Consciously or unconsciously, [the trustee] will favor one side or the other, and where placed in this position of temptation, there is always the danger that [the trustee] will yield to the call of self-interest.[10]

The cases cited by *** in support of the proposition that a transaction is not disloyal if undertaken in the best interests of the beneficiaries relate to the authority of a local court either to create an individual exception on the basis of the court's equitable powers, or to permit an already completed transaction. The court in *Wachovia*, cited by *** noted that "the court, in the exercise of its inherent equitable powers" has the authority to provide "rare and justifiable exceptions."[11] The court further noted that it is "universally recognized that one of the most fundamental duties of the trustee" is undivided loyalty and that in North Carolina there had been "few inroads" on this rule.[12]

The Comptroller, however, is not authorized by 12 U.S.C. 92a to exceed local law in authorizing larger trust powers for national banks than exist for state-chartered trust institutions. Thus, the Comptroller may not grant exceptions to the duty of loyalty in the areas of concern to *** that have not been authorized under the applicable local law.[13]

However, arguments that a transaction would be in the best interests of the beneficiaries might be useful in petitioning for a court order under local law authorizing a transaction. Evidence of "best return" or "best interests of beneficiaries," particularly in light of evidence indicating a lack of alternatives, may provide a basis under which a local court may authorize the transaction in the exercise of its inherent equitable powers.[14] If such a court order is obtained, the Comptroller's regulation also would authorize the transaction as falling within an exception to section 9.12.

<u>Criteria To Be Applied by a National Bank With Regard to Financial Benefits from Mutual Fund Complexes.</u>

A. Underlying Concern of Section 9.12

Section 9.12 does not prohibit the provision of trust administration services or product innovation, but only addresses conflicts of interest that may arise as a result of the particular manner of the delivery of services and

[8] Bogert, George, *Trusts* (6th ed. 1987) 95, pp. 341-43; *Scott on Trusts*, Vol. IIA, 170, p. 311.

[9] *See* Bogert, *Trusts* (6th ed. 1987), 95, p. 342 ("It is a well-known quality of human nature that it is extremely difficult, or perhaps impossible, for an individual to act fairly in the interests of others whom he represents and at the same time consider his own financial advantage. . . . For the sake of protecting [the beneficiaries] against this risk equity forbids the disloyal transaction and does not consider its actual merits or effects which in many cases may be concealed.")

[10] 269 N.C. 701, 153 S.E.2d 449, 459 (N.C. 1967).

[11] 153 S.E.2d 449 at 460.

[12] 153 N.E.2d at 457.

[13] There is a statutory limitation on the power of the Comptroller to permit fiduciary practices that would not be permitted [illegible] under local law. The Comptroller [illegible] permit a national bank to act in a fiduciary capacity [illegible] contravention of State or local law.

[14] Scott on Trusts, Vol. IIA, [illegible]

conclusion. Delivery practices of concern are those that place the bank in a position such that the bank's investment decisions are capable of being influenced with regard to mutual funds. In a number of interpretations, the OCC has noted that a bank would be placed in such a position if it accepted computer services, all expense paid travel and entertainment in connection with seminars, rebates or discounts to the trustee, or investment advisory fees from the mutual fund sponsor.

B. Compliance with Section 9.12.

A national bank may accept a financial benefit from a mutual fund complex without falling under the prohibition of 12 CFR 9.12 to the extent that the bank can demonstrate lawful authorization by:

— the instrument creating the trust relationship;

— a court order; or

— local law.

Without such authorization, however, the above types of benefits fall within the self-dealing prohibition in 12 CFR 9.12, and should be avoided.

Robert B. Serino
Deputy Chief Counsel

* * *

559 — April 15, 1991

In response to your request dated February 15, 1991, the Office of the Comptroller of the Currency (OCC) hereby grants preliminary approval for *** (bank) to issue 100,000 shares of perpetual non-cumulative preferred stock with a par value of $100 per share. We understand that the dividends payable on the non-cumulative preferred stock will be set at 3 percent per annum on the original issue price and that the holders of the preferred stock will have preference rights over the owners of common stock in the event of a liquidation. The holders of the preferred stock will possess the same voting rights as the holders of common stock and will vote with the common as a single class except with respect to proposals which affect the rights of the holders of the new preferred stock and except as otherwise provided by law. You are reminded that 12 U.S.C. 60 would apply to any payment of dividends.

The OCC has determined that the bank's proposed authorization for issuance of voting preferred stock [illegible] a majority of the [illegible] in accordance with the national banking laws and the bank's articles. This determination is limited to the facts of this case and in particular to a situation where existing shareholders have preemptive rights to purchase the preferred stock being issued. This determination should not be viewed as an explicit approval of all aspects and terms of the bank's preferred stock amendment.

In proceeding with the change in capital, please refer to section 32 of the *Comptroller's Manual for Corporate Activities*. Please pay particular attention to the securities offering disclosure requirements of 12 CFR 16. Also, notify the OCC after the bank has completed the increase and complied with all of the requirements of 12 CFR 5.46 (*See* document 10A of *Comptroller's Manual for Corporate Activities*). The change in capital should be completed as soon as possible.

Background

A Formal Agreement with the OCC dated November 26, 1990, requires the bank to achieve an equity capital to total assets ratio of at least 3 percent no later than April 30, 1991, and at least 5 percent no later than September 30, 1991. The sale of this stock is deemed to be essential if the bank is to comply with its commitment to achieve and maintain a safe and sound capital level and, by so doing, prevent insolvency.

It is our understanding that the outstanding common stock of the bank is held by two shareholder groups, one of which owns 64.45 percent and the other of which owns 35.55 percent. We further understand that the shareholder group owning 64.45 percent of the outstanding common stock has expressed a willingness to inject between $9,000,000 and $10,000,000 into the bank in exchange for voting stock, either common or preferred, but that no such stock is currently authorized and available for purchase. The 35.55 percent shareholder group voted against the authorization of additional common stock at the February 19, 1991, meeting of shareholders and has indicated that it will vote against the authorization of additional voting preferred stock. The 64.45 percent shareholder group has previously expressed a willingness to inject capital into the bank in exchange for non-voting preferred stock if the 35.55 percent shareholder group would be willing to make a pro-rata investment in non-voting preferred. The 35.55 percent shareholder group has indicated that it would not object to the issuance of non-voting preferred stock, but it declined to make a pro-rata investment in non-voting preferred.

The bank's Articles of Association (articles) provide that the holders of common stock have preemptive rights. In addition, the articles state that the articles "may be amended at any regular or special meeting of the

shareholders by the affirmative vote of the shareholders owning at least two-thirds of the stock of this Association, subject to the provisions of the banking laws of the United States."(article eighth) The articles also provide that "[t]he capital stock of this Association may be increased or decreased from time to time in accordance with the provisions of the banking laws of the United States." (article fifth) The 35.55 percent shareholder group has taken the position that the bank's articles require the vote of the holders of two-thirds of the bank's common stock for the authorization of preferred stock.

Legal Analysis

The national banking laws clearly provide that the vote of shareholders owning a majority of the stock of the bank is necessary to authorize and set the terms of preferred stock. The national banking laws do not provide that shareholders can adopt a higher voting requirement than is specified by law.

The controlling law is found at 12 U.S.C. 51a. That provision specifically states that only a majority vote is necessary to issue preferred stock and make the amendments to the bank's articles which are necessary to effect that issuance. The language of 12 U.S.C. 51a is as follows:

> Notwithstanding any other provision of law, any national banking association may, with the approval of the Comptroller of the Currency and <u>by vote of shareholders owning a majority</u> of the stock of such association . . . <u>issue preferred stock</u> of one or more classes . . . <u>and make such amendments to its articles of association as may be necessary for this purpose.</u> (emphasis added).

12 U.S.C. 51a does not state that the majority vote requirement can be replaced with a higher percentage, nor does any other applicable provision of the national banking laws.

Both 12 U.S.C. 51a and 51b address the requirements for amending the bank's articles to effect increases in preferred stock. 12 U.S.C. 51b states that the voting and other rights of preferred shareholders shall be set forth in the articles with the approval of the Comptroller of the Currency but does not specify what percentage shareholder vote is necessary to amend the articles. Twelve U.S.C. 51a states that a majority vote is required to make any amendments to the bank's articles needed to issue preferred stock. Such amendments would necessarily include any amendments required to determine the voting or other terms of the preferred stock since perferred stock cannot be issued without determining those terms. In light of the silence in 12 U.S.C. 51b with respect to the percentage vote required, it is reasonable to construe 12 U.S.C. 51a as determining the voting requirements needed to change the bank's articles to set forth the rights of the preferred stockholders. *See* 2A Sutherland Statutory Construction 46.05 (4th Ed. 1984).

Interpreting 12 U.S.C. 51a and 51b as requiring a simple majority vote for the authorization and setting the terms of preferred stock is consistent with 12 U.S.C. 21a. Twelve U.S.C. 21a provides:

> <u>Except as otherwise specifically provided by law</u>, or by the articles of association . . . the articles of association of a national banking association may be amended with respect to any lawful matter, and any action requiring the approval of the stockholders of such association may be had by the approving vote of the holders of a majority of the voting shares of the stock of the association. (emphasis added).

Twelve U.S.C. 21a permits the bank to require in excess of a majority vote for the amendment of the articles except as otherwise provided by law. Since 12 U.S.C. 51a sets a majority standard for amendments authorizing and setting the terms of preferred stock, 12 U.S.C. 21a defers to the 12 U.S.C. 51a majority standard.

We are aware that this reading of the national banking laws at first may appear at variance with comparable provisions of certain state statutes. For example, the Model Business Corporation Act and the laws of a number of states, including Massachusetts, specifically address the question of whether articles of association may include voting requirements which are greater than those provided by law. Those laws specifically allow corporations to adopt articles which provide greater voting requirements for shareholders than are provided by the state corporate statutes. Model Business Corporation Act 7.27 (1984); Mass. Ann. Laws ch. 156B, 8 (Law. Co-op. 1979). On closer examination, we believe our reading of the national banking laws comports with analogous corporate provisions. When corporate law is written to permit stockholders to adopt a higher voting requirement than the voting requirement specified in other provisions of corporate law, that permissive ability is clearly expressed and stated. Congress has included no such provision in the national banking laws and, in light of the plain language of section 21a, we are reluctant to imply higher voting requirements where the governing statute is express concerning shareholder voting requirements.

Interpreting 12 U.S.C. 51a and 51b as requiring only a majority vote for the authorization of voting preferred

stock is consistent with the general purpose of those statutes. The statutes were enacted as part of the Emergency Banking Act of 1933, a law specifically designed to inject capital into banks and relieve the serious crisis then facing the banking industry. Since allowing shareholders to require in excess of a simple majority vote to authorize preferred stock would have interfered with capital raising, it is doubtful that Congress intended to give shareholders such ability. Had Congress intended to require or allow super-majority votes for preferred stock issuances, it easily could have adopted the two-thirds standard applicable to increases in common stock. *See* 12 U.S.C. 57.

Requiring a majority to amend the bank's articles is consistent with the OCC's regulation on changes in equity capital. Twelve CFR 5.46(d) (2) provides that "[a]n amendment to the Articles of Assocation to authorize preferred stock . . . requires the approval of the holders of a majority of the stock entitled to vote." The interpretation is also in accordance with the position the OCC has taken on super-majority voting in the merger area. The OCC has not allowed banks to adopt articles which require a percentage vote for the approval of mergers that is higher than the two-thirds vote that is specified in the merger statutes. *See* 12 U.S.C. 214a, 215, and 215a; letter of Legal Advisory Services Division Assistant Director Peter Liebesman, January 26, 1984 (unpublished).

Reading the national banking laws as requiring a simple majority to authorize voting preferred is well founded on public policy grounds. Requiring a majority vote enhances the ability of banks to raise capital and comply with the supervisory directives of federal regulators. Such enhanced ability can reduce the number of bank insolvencies and the losses to the Bank Insurance Fund. In addition, requiring only a majority vote limits the possibility that minority shareholders will be able to block the recapitalization of a bank in situations where individuals with substantial resources are willing to inject capital.

It could be argued that allowing a majority of the shareholders to authorize voting preferred stock enables the 64.45 percent shareholder group to circumvent the two-thirds vote requirement for the authorization of common stock set forth at 12 U.S.C. 57. However, Congress enacted separate provisions governing the authorization of preferred and common stock and included different authorization requirements in those separate provisions. If Congress had intended that a vote of shareholders owning two-thirds of the stock of the bank was necessary to authorize preferred stock, Congress would not have enacted 12 U.S.C. 51a [illegible] a simple majority vote requirement.

Since the preferred stock being authorized and issued is not identical to common stock that would be authorized under 12 U.S.C. 57, it is not an evasion of 12 U.S.C. 57 to allow shareholders owning a majority of the stock of the bank to authorize the preferred stock. Common and preferred stock are not identical in their attributes. For example, preferred stockholders have preference over common stockholders in the payment of dividends and in the event of liquidation. In this case, the bank's articles are clear that common and preferred stock are not identical.

It could also be argued that allowing the 64.45 percent shareholder group to authorize preferred stock permits the dilution of the voting power of the 35.55 percent shareholder group. However, since the OCC's decision to allow a majority vote for the authorization of voting preferred is limited to a situation where existing shareholders have preemptive rights, the 35.55 percent shareholder group has the ability to ensure that its voting power is not diluted. The 35.55 percent shareholder group can purchase its pro-rata share of the preferred stock being issued. In the absence of preemptive rights, one would need to examine in greater detail the effect of the capital increase on the right of the minority shareholders. In this instance, minority shareholders are protected against the adverse effect of any possible dilution through the opportunity to purchase additional shares.

In conclusion, this reading of sections 51a and 51b is both reasonable and preferred, especially in light of the plain language of the bank's own articles. Although the bank's articles specify that shareholders owning at least two-thirds of the stock of the bank must vote for amendments, the articles also defer to the national banking laws. Article eighth, which sets forth the two-thirds vote requirement, states that the amendment procedure is "subject to the provisions of the banking laws of the United States." In addition, article fifth, the capital article, states that capital may be increased "in accordance with the provisions of the banking laws of the United States." Since the national banking laws require only a majority vote for the authorization of voting preferred, the bank's proposed issuance of voting preferred stock appears to be consistent with the bank's articles.

The foregoing analysis is limited to the facts involved in this particular case. Additional or different facts could warrant the OCC to alter its present position.

J. Michael Shepherd
Senior Deputy Comptroller for
Corporate and Economic Programs

* * *

This responds to your letter dated April 19, 1991, regarding the securities disclosure and reporting requirements applicable to *** Federal Savings and Loan Association, (***), (***) (Federal), upon the consummation of its conversion to a national bank on or about April 29, 1991.

Background

As we understand the transaction, [***] Federal plans to convert from a federal savings association into a *** state bank, and then, simultaneously, to convert from a state bank into a national bank pursuant to the provisions of 12 U.S.C. 35. Once *** Federal has converted into the bank, the bank will seek to reorganize into a holding company structure through a reverse triangular merger with an interim national bank, a subsidiary of a newly formed holding company. As structured, the proposal is to merge the interim national bank with and into the bank, and to give the shareholders of the bank (formerly the shareholders of *** Federal) shares of the holding company's stock in exchange for their current holdings. It was originally intended that the charter conversion and holding company reorganization would be completed simultaneously. The Board of Governors of the Federal Reserve System (Federal Reserve), however, has deferred its approval of the holding company reorganization until the OCC has had the opportunity to reexamine the bank for compliance with the Community Reinvestment Act (CRA). You anticipate that the OCC will find the bank to be in compliance with the requirements of the CRA, and that holding company formation will be completed approximately 45 to 60 days after the consummation of the charter conversion. Nonetheless, because it was originally intended that the charter conversion and holding company reorganization would be completed simultaneously, an S-4 Registration Statement was filed with the Securities and Exchange Commission (SEC) to register the stock of the proposed holding company under the Securities Act of 1933.

In your letter, you have represented that the securities of *** Federal are currently registered with the Office of Thrift Supervision (OTS) pursuant to section 12(g) of the Securities Exchange Act 1934 (1934 Act). You have also represented that upon consummation of the charter conversion, a Form 8-K will be filed with the OTS disclosing the consummation of the charter conversion and the intention of the bank to file future reports required under the 1934 Act with the OCC pending completion of the holding company reorganization. In addition to the Form 8-K, the bank will also file with the OTS a Form 15 deregistering the securities of *** Federal with the OTS. Concurrently with the filing of the Forms 8-K and 15 with the OTS, the bank intends to file with the OCC a Form F-3 transferring the registration of *** Federal's securities from the OTS to the OCC and acknowledging that all securities reports required to be filed under the 1934 Act will be filed with the OCC until the consummation of the holding company reorganization, whereupon the newly formed holding company will file its securities reports with the SEC.

Because the securities of *** Federal have been registered with the OTS under the 1934 Act, and because of the impending consummation of the holding company reorganization, you have opined that the bank need not file a Form F-1 registration statement with the OCC, and seek the OCC's concurrence with your position.

Analysis

The registration requirements under section 12 of the 1934 Act applicable to securities of successor national banks are set forth in 12 CFR 11.202. Section 11.202(a) provides:

> As to successor banks, (a) Where in connection with a succession by merger, consolidation, exchange of securities or acquisition of assets, equity securities of a bank, not previously registered pursuant to section 12 of the [1934] Act, are issued to the holders of any class of equity securities of another bank which is registered pursuant to section 12(g), the class of securities so issued shall be deemed to be registered pursuant to section 12(g) of the Act unless upon consummation of the succession such class is exempt from such registration or all securities of such class are held of record by less than 300 persons.

While the conversion of *** Federal into the bank is the type of transaction contemplated by section 11.202(a),[1] section 11.202(a) does not appear from a literal reading to be directly applicable to the conversion because that provision by its terms applies to "banks" that are "registered," and neither *** Federal nor the momentarily existing state bank are "registered banks" as that term is used in 12 CFR 11.[2] Nonetheless,

[1]The conversion would involve an "exchange of securities" for purposes of 12 CFR 11.202(a).

[2]The term "bank" is not defined in 12 CFR 11. See 12 CFR 11.1[illegible]. It is unlikely, however, that the term was employed as part of a conscious decision to exclude savings associations. At the time of the adoption of 12 CFR 11.202(a) in 1975, there were no conversions, mergers, or other corporate reorganizations of savings associations into national banks. Indeed, for purposes of that section, only banks were succeeded in a corporate reorganization by [illegible]. It is likely for that reason that the term "bank" was used in [illegible] 11.202(a).

tion, application of the rule embodied in 12 CFR 11.202 [illegible] to banks and may properly be applied [illegible] where a non-bank financial institution is succeeded in a corporate reorganization by a national bank. Indeed, section 11.202(a) is based on, and virtually identical to, SEC Rule 12g-3 (17 CFR 240.12g-3) which applies to all "issuers," regardless of corporate form.[3] Additionally, and more importantly, the purpose behind the adoption of section 11.202(a) is not unique to banks or confined to reorganizations of like corporate entities. In the release accompanying the proposal of Rule 12g-3, the SEC took the following position:

> where an issuer which has succeeded, by merger, consolidation, exchange of securities or acquisition of assets, to another issuer which had securities registered pursuant to Section 12(g) of the [1934] Act, or securities which would have been required to be so registered but for the succession, the successor issuer assumes the duty to provide for such security holders a continuation of the benefits provided, or which would have been provided, by registration of the securities of the predecessor, unless upon consummation of the succession the securities are exempt from registration or all securities of the class are held of record by less than 300 persons.
>
> In order to avoid a hiatus in registration and reporting, it is essential that the successor issuer be regarded as subject to Section 12(g) of the Act immediately upon the consummation of the succession . . . . In such case, in lieu of filing a registration statement under Section 12(g), the successor issuer would be required to file a report pursuant to Section 13 on Form 8-K with respect to the transaction.

"Notice of Proposed Rules Regarding Registration and Reporting by Successor Issuers," Exchange Act Release No. 9017, [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,928 (November 12, 1970); *see, also*, "Adoption of Rules Regarding Registration and Reporting by Successor Issuers," Exchange Act Release No. 9072, [1970-1971 Transfer Binder] Fed. Sec. L. Rep. (CCH) ¶ 77,954 (February 10, 1971).

Like the SEC, we believe it is imperative that the benefits afforded to shareholders of *** Federal (and subsequently the bank) by virtue of registration will not be interrupted through the device of a corporate reorganization. Therefore, given the compelling policy [illegible] 12 CFR 11.202(a) and the Congressional mandate in section 12(i) of the 1934 Act to "issue substantially similar regulations to regulations and rules issued by the [SEC] under [Section 12 of the 1934 Act] . . . ,"[4] we are compelled to interpret 12 CFR 11.202(a) to apply to reorganizations of any corporate entity that is succeeded by a national bank, including national bank successions to savings associations, whether or not through the use of a momentary conversion to a state bank charter. Accordingly, we will deem the bank to be registered pursuant to section 12(g) of the 1934 Act upon consummation of the succession by the bank to *** Federal.

In accordance with the bank's commitments and the requirements of 12 CFR 11.202(a), the bank must: (1) file a Form 8-K with the OTS disclosing the consummation of the charter conversion, the transfer of registration from the OTS to the OCC, and the bank's commitment to file all future reports required under the 1934 Act with the OCC until the consummation of the holding company reorganization, at which time the newly formed holding company will file its securities reports with the SEC, and (2) file with the OCC a Form F-3 disclosing the consummation of the charter conversion and the transfer of registration from the OTS to the OCC. The F-3 filed with the OCC must acknowledge that the securities reports required to be filed under the 1934 Act will be filed with the OCC until such time as the newly formed holding company begins filing reports with the SEC. Additionally, the Form F-3 should, as an attachment, contain a copy of the registration statement previously filed with the OTS, together with all amendments thereto. Finally, you are reminded that all reporting obligations and all other obligations attached to registration under the 1934 Act will continue to apply to the bank.

This letter is based on the facts as you have represented them and any material change in these facts may require a different result.

Randall M. Ryskamp
Attorney
Securities and Corporate
Practices Division

* * *

[3] [illegible]

[4] Indeed, when the substance of 12 CFR 11.202(a) was proposed [illegible] in 1975, the preamble accompanying the notice of proposed rulemaking indicated that "[t]he proposed revised Part 11 has been carefully amended to be substantially similar to relevant regulations promulgated by the [SEC] with certain exceptions . . . ." 40 Fed. Reg. [illegible] (1975).

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Thank you for your letter of January 25, 1991, requesting information on the current system of disclosure and financial reporting for publicly held depository institutions. We understand that you are requesting this information to assess the merits of amending the Securities Exchange Act of 1934 (Exchange Act) to transfer the administration and enforcement of disclosure and other requirements for bank and thrift securities to the Securities and Exchange Commission (SEC). You also requested information to assess possible amendments to the Securities Act of 1933 (Securities Act) which would eliminate the exemptions from registration for bank and thrift securities.

The Office of the Comptroller of the Currency (OCC) believes that repeal of section 12(i) of the Exchange Act and amendment of sections 3(a) (2) and 3(a) (5) of the Securities Act should be considered only in the context of a comprehensive plan modernizing the structure and regulation of the financial services industry. In the absence of such reform, the current division of regulatory authority provides important protections for investors and capably implements the objectives of the federal securities laws. Section 12(i) gives the banking agencies the authority to administer and enforce certain sections of the Exchange Act. Section 12(i) requires that financial institutions with securities registered under the Act file registration statements, proxy materials, and periodic reports with the banking agency that is their primary federal regulator. The banking agencies also perform other securities disclosure functions that do not arise from the authorities provided under section 12(i). For example, the OCC reviews proxy statements distributed to bank shareholders in connection with mergers and consolidations, even if the bank does not have securities registered under the Exchange Act. While sections 3(a) (2) and 3(a) (5) exempt from registration securities issued by banks or savings associations, such issuances are not unregulated. The banking agencies have promulgated regulations in this area. The OCC has implemented regulations governing disclosures by all national banks when they are selling their securities to the public and reviews all bank securities offering documents.

The effect of repealing section 12(i) of the Exchange Act and amending sections 3(a) (2) and 3(a) (5) of the Securities Act would be to transfer only the responsibilities to administer and enforce the registration and reporting requirements from their primary federal regulator to the SEC. The banking agencies' other closely interrelated securities disclosure functions would not be affected.

Unlike most corporations, banks are subject to an extensive system of regulation. The staffs of the banking agencies administer this complex regulatory system and have both substantial knowledge of bank operations and considerable expertise in banking and securities law and regulation. The agencies' expertise and access to examination, enforcement, and other confidential data pertaining to institutions under their jurisdiction places these agencies in a good position to evaluate securities disclosures, require appropriate revisions, develop regulations governing disclosure obligations and otherwise supervise securities activities.

The OCC has integrated its securities and other supervisory responsibilites in a manner that enhances the quality of public disclosures made by banks in Exchange Act filings and other securities related filings reviewed by the OCC. In reviewing securities filings, the OCC consults examination, enforcement, and other confidential data, and employs its combined banking and securities expertise, to identify needed corrections. With troubled banks, for example, the OCC requires full disclosure of the risks of investing in such institutions.

Before certifying capital, OCC staff review the adequacy of the disclosures made in connection with the securities offering and require appropriate revisions. The OCC's review process provides shareholders with vital information and ensures that bank capital is stable enough to absorb losses as may be necessary. With mergers, one of the six factors considered by the OCC in deciding whether to approve applications is the adequacy of disclosures made to shareholders concerning the transaction. The OCC reviews and requires appropriate revisions in offering circular and proxy statement disclosures relating to proposed mergers. Before chartering banks, the OCC reviews initial securities offering disclosures and requires appropriate revisions. Due to the banking law expertise of OCC staff, our review of bank proxy materials and periodic reports, as well as bank securities offering documents, has led to the discovery and prevention of potential violations of banking laws, including the Change in Bank Control Act of 1978 and the Glass Steagall Act.

The OCC's integration of securities and other supervisory responsibilities is effective because the OCC's securities experts and other supervisory staff freely exchange information (e.g., during ongoing examinations that discover significant problems) in a manner that would be difficult to duplicate with an outside agency.

Even if section 12(i) were rescinded and section 3(a) (2) and 3(a) (5) were amended, the OCC probably would continue to review Exchange Act filings, as well as other disclosure and securities offering documents, due to their supervisory interests. The SEC currently sends bank holding company filings involving national banks to the OCC for review, recognizing the OCC's expertise over banking regulation and operations. If the proposed statutory changes were enacted, the OCC most likely would continue to review national bank filings at the request of the SEC.

The OCC supports the concept of functional regulation in the context of a comprehensive restructuring of the financial services industry. Functional regulation, to be meaningful and effective, must be carefully implemented and designed to ensure that any new regulatory scheme based on this principle does not result in duplicative or inconsistent regulation of affected parties and institutions. Sections 12(i), 3(a) (2), and 3(a) (5) currently place securities oversight responsibilities with agencies that can handle these responsibilities in an effective and efficient manner. In the context of a comprehensive restructuring of the bank regulatory system, which alters the allocation of regulatory responsibilities along the lines of functional regulation, it may be appropriate to reexamine sections 12(i), 3(a) (2), and 3(a) (5). In the absence of such analysis, we believe it is premature to consider repealing section 12(i) and amending sections 3(a) (2) and 3(a) (5) independently.

Responses to the specific questions you posed are set forth in the attached Staff Responses (Appendix A).

Robert L. Clarke
Comptroller of the Currency

APPENDIX A: OCC Staff Responses

Question 1

For each of the past five years, how many offerings of securities of depository institutions under your jurisdiction have been made under the registration exemptions in section 3(a) (2) and 3(a) (5)?

Response to Question 1

Even though national bank securities are specifically exempt from the registration provisions of the Securities Act, the OCC has promulgated regulations which govern the offer and sale of all national bank securities. National banks have made offerings pursuant to those regulations during the past five years, as follows:

	1986	1987	1988	1989	1990
Public offering	43	50	71	63	54
Nonpublic offering	108	98	75	71	74
Total	151	148	146	134	128

Question 2

For each of the past five years, how many depository institutions under your jurisdiction have been subject to section 12(i)?

Response to Question 2

The number of national banks subject to the registration requirements of the OCC pursuant to section 12(i) of the Exchange Act is as follows:

1986	1987	1988	1989	1990
77	71	60	61	52

Question 3

What, if any, material differences are there in the disclosures contained in the offering statements of bank and thrift holding companies filed with the SEC and the disclosures made by publicly held depository institutions under your jurisdiction that are not required to be registered with the SEC?

Response to Question 3

The disclosures contained in the offering statements of national banks are substantially similar to those contained in the offering statements of bank and thrift holding companies filed with the SEC. Although national banks are exempt from the registration provisions of the Securities Act, national banks are subject to the OCC's regulations, set forth at 12 CFR 16, governing the offer and sale of all national bank securities. Those regulations generally prohibit a national bank from offering securities to the public except through an offering circular that has been declared effective by the OCC. The few exemptions to the offering circular requirements are comparable to those found in federal securities laws and in fact are less numerous than those available under federal securities laws. For example, the OCC does not provide an exemption for intrastate offerings.

The OCC requires national banks to provide shareholders with offering statements which thoroughly discuss the banks' condition and operations, as well as any currently existing or pending enforcement actions. (*See* Appendix B for examples of the extensive disclosure required by the OCC.) The OCC's offering

statement regulations contain detailed disclosure requirements designed to provide shareholders with full and accurate information. Those regulations cover a number of different items, including loan loss experience and insider transactions. The OCC has also developed a variety of disclosure policies, in addition to the disclosure requirements set forth in the regulations, to ensure that shareholders have the information necessary to make informed investment decisions. For example, the OCC requires banks with CAMEL ratings of 3, 4, or 5, banks in organization, recently chartered banks, and 1 and 2 rated banks with special risks to include Risk Factors sections at the beginning of the offering statements. In the case of a 3, 4, or 5 rated bank, the Risk Factors would discuss such matters as the questionable viability of the institution, pending FDIC actions to terminate insurance, inadequate capital, and liquidity problems. The OCC also has a disclosure policy on risk-based capital which requires banks to describe the components of risk based capital, to discuss the banks' ability or plans to meet risk based capital standards, and to provide supporting statistics.

Question 4

Section 12(i) requires that the bank and thrift regulatory agencies issue regulations "substantially similar" to those promulgated by the SEC. What, if any, material differences are there in the regulations (or interpretations of the regulations) under sections 12, 13, 14, and 16 of the Exchange Act issued by the SEC and by your agency?

Response to Question 4

The OCC's section 12(i) regulations are modeled after those promulgated by the SEC and are designed to elicit substantially the same information as is required by the SEC. The OCC is currently considering whether to revise its existing regulations to include certain recently promulgated SEC regulations or, as an alternative, to adopt a new procedure which would incorporate the SEC's regulations by reference.

Question 5

What is the extent and frequency of review of offering statements, reports, and other disclosures filed with your agency by depository institutions subject to section 12(i)? To what extent, if any, does your agency's system of review differ from the review function performed by the SEC of disclosures made by publicly held bank and thrift holding companies?

Response to Question 5

Every offering circular, proxy statement, and registration statement filed with the OCC is assigned to a member of the securities staff. Review of the disclosure document is then tailored to the specific transaction, taking into account the condition of the bank making the disclosure, the type of event, and the type of document under review. A relatively simple transaction involving a healthy institution, such as a sale of shares to a limited number of directors, requires less review than a sale of shares to the public by a bank in poor financial condition. An unusual or novel transaction such as a complex recapitalization or hostile tender offer requires intensive review. Even in those limited cases in which the OCC "declines to review" a filing, at least one securities staff member will have identified the bank's condition, examined relevant background material, and studied the contents of the particular document to reach that decision.

In conducting disclosure review, the OCC's securities staff makes full use of the free exchange of information which takes place within a single regulatory agency. The staff has complete access to confidential information developed through OCC examination and supervision of national banks, including reports of examination, any applicable enforcement documents, contemplated enforcement actions, internal memoranda, bank correspondence, corporate applications, and historical information. The securities staff member has contact with other OCC personnel participating in the supervision of the subject bank, including appropriate examining personnel, to obtain the most current information available directly from the bank's own books and records. When ongoing examinations discover significant problems, the securities staff member confers with examiners on new developments relevant to securities filings under review, and consults confidential internal data bases. Discussions with examiners and analysts and review of confidential OCC information enable the securities staff to identify banks that fail to disclose insider transactions, losses in loan portfolios, or other material information that must be disclosed to investors. The review process often requires national banks, their counsel, or their underwriters to submit revised documents in response to staff comments for clearance prior to distribution. Such revisions can be major and involve substantial changes in textual and financial statements. (*See* Appendix B for examples of the extensive disclosure the OCC has required.)

The OCC's system provides for the review of a much larger percentage of the disclosures filed than does the

system used by the SEC. In contrast, the SEC has [illegible] only a fraction of the total filings are selected for review. [illegible] and J. Murphy, Division of Corporation Finance, SEC, "Application of the Disclosure Requirements of the Federal Securities Laws to Bank and Thrift Holding Companies 4" (December 5, 1990). Further, the OCC's review system makes full use of the vast quantity of confidential data obtained through the OCC's examination and supervision of national banks and thus increases the likelihood that material omissions will be identified.

Question 6

What resources are currently devoted to the review of filings by publicly held depository institutions?

Response to Question 6

The OCC maintains the Securities and Corporate Practices Division, with a securities staff in Washington of fourteen attorneys and one securities and corporate practices specialist, which reviews securities filings. The securities staff review disclosures filed with the OCC as well as numerous disclosure documents filed with the SEC by bank holding companies with national bank subsidiaries and forwarded to the OCC for a limited review. The staff also draft securities regulations, handle securities enforcement actions, prepare interpretive letters involving securities issues, and work on certain corporate issues (e.g., changes in control, trusts, corporate governance, and accounting). Filings are also circulated to the OCC's accounting division and supervisory staff involved in related bank supervisory functions. (*See* Response to Question 7 for further information on resources devoted to filings review as part of the supervisory process).

Question 7

What resources would be saved by your agency if (a) sections 3(a)(2) and 3(a)(5) of the Securities Act were amended to require registration of bank and thrift securities with the SEC, and (b) section 12(i) of the Exchange Act was repealed?

Response to Question 7

It is [illegible] that the OCC would achieve significant [illegible] savings as the result of amendments to sections [illegible] of the Securities Act and the [illegible] of the Exchange Act. The OCC [illegible] resources to over[illegible] general [illegible]

The OCC performs securities disclosure functions as part of the certification of capital, chartering, and mergers. National banks are subject to more stringent regulation than other corporations when raising capital. Banks may not increase captial until they receive certification from the OCC. Before certifying capital, the OCC reviews the bank's compliance with laws, including the adequacy of disclosures to shareholders. Securities staff and staff responsible for certification coordinate their efforts to promote full disclosure to shareholders, avoid certification of capital that may be subject to rescission, and protect the stability of capital infusions into banks. Prior to certification, the OCC has discovered instances in which banks have offered securities to the public without an effective circular or made an offering with materials that contained statements that were false and misleading and has required banks to rescind their offerings and return investor funds. Following rescission, banks may make new offerings using disclosure materials that have been declared effective by the OCC.

Before any national bank receives a charter, organizers must satisfy the OCC that its capital plans are viable. As part of this process, the OCC reviews the application and all proposed disclosure materials before the organizers may offer securities to the public. This review is undertaken directly in the district offices, where the charter applications are processed, in order that those persons most familiar with the proposed banks and organizers may make the most meaningful review with the least duplication of effort. The securities staff's knowledge of the chartering proposal places them in a strong position to review related securities disclosures and require appropriate revisions, especially as proposals change. Also, offering circulars from organizing banks have provided our district office reviewers an important source of information concerning significant changes in the underlying charter application (e.g., the organizers, their capital plans, a change in the new bank's proposed location, and potential new investors). Significant changes in the organizers' plans as reflected in securities offering materials, have prompted district offices to require the refiling of the charter application.

The OCC has specified adequacy of disclosures to shareholders as one of six factors to be considered before it grants approval in merger transactions. OCC reviews the terms and conditions of proposed transactions, especially the shareholders' consideration, various exchange ratios, per share data, financial statements, and other material information. Using internal OCC information, the securities staff require revisions needed to provide shareholders with accurate material information. Since merger applications may be denied

based on inadequate disclosures, banks have a strong incentive to provide appropriate disclosures. The OCC's staff involved in merger decisions work closely with the securities staff to ensure that the disclosure review process and merger decision making are coordinated so that shareholders receive required information and approved mergers are not subject to subsequent challenge. The OCC would continue to devote resources to review of these disclosures even if the above amendments were enacted.

The OCC would continue to devote substantial resources to providing the SEC with assistance if the amendments were adopted. The OCC now devotes significant resources to assisting the SEC in its review and enforcement functions. Since January 1, 1990, the OCC has given a limited review to 221 registration statements and public periodic reports filed by bank holding companies controlling approximately 670 national banks. These registration statements and public periodic reports were filed with the SEC and then forwarded by the SEC to the OCC for supplemental review. The OCC has also expended substantial resources in making SEC referrals and providing assistance to the SEC in connection with SEC investigations and enforcement actions, including providing SEC staff with information on banking laws generally and on the condition and operations of particular institutions. If the above amendments were adopted, we would expect that the SEC would request assistance with the review of national bank filings and that resources devoted to assisting the SEC would increase. Also, the OCC would continue to use its general banking enforcement authorities against national banks that engaged in misconduct that resulted in violations of both banking and securities laws. (*See* Response to Question 10).

Question 8

What is the degree of compliance with disclosure requiremetns imposed on depository institutions under your jurisdiction which are subject to section 12(i)?

Response to Question 8

All disclosures filed with the OCC go through an initial screening process and a very large percentage are reviewed. In reviewing securities filings, the OCC consults examination, enforcement, and other confidential data, and employs its combined banking and securities expertise, to identify needed corrections. (*See* Response to Question 5). The OCC reviews disclosures to shareholders in connection with applications filed by banks (e.g., capital certification, mergers, charters) and ensures that such disclosures are adequate prior to final action on the applications. Reviews conducted in connection with applications, as part of the supervisory process, provide additional sources of information which are used to verify the completeness and accuracy of disclosures. Such reviews also increase incentives for the filers to provide full and accurate information since failure to make complete disclosure results in denial of the application. The OCC's review and supervisory efforts have enhanced the level of compliance with disclosure requirements. (*See* Response to Question 7). The OCC actively enforces the securities laws under its securities review and enforcement powers. OCC efforts to enforce the securities laws as a matter of routine in connection with other supervisory efforts further encourage industry compliance. (*See* Response to Question 9).

Question 9

During the past five years, how many enforcement cases has your agency brought against depository institutions under your jurisdiction for violations of the requirements imposed under sections 12, 13, 14, and 16 of the Exchange Act?

Response to Question 9

The OCC has pursued a range of formal and informal enforcement actions to redress violations of law relating to the securities activities of national banks. The following table sets forth the number of formal enforcement actions the OCC has taken since 1985 in each of the several major areas of bank securities activities for which it has enforcement authority.[1] Descriptions of those cases are set forth in Appendix C.

Injunctions under Exchange Act section 12(i)	9
Dealer departments subject to Exchange Act section 15B	6
Transfer agents subject to Exchange Act section 17A	2
Other actions under 12 U.S.C. 1818 involving securities law violations	6

As the primary regulator of national banks, the OCC is in a strong position to identify, investigate, and prosecute violations of law. The OCC securities staff possess considerable specialized expertise on banking and securities operations and laws that is valuable in these enforcement efforts. Moreover, the staff draw on the considerable confidential information and expertise of examiners, accountants, and others within the agency in identifying, developing, and prosecuting cases. Through bank examinations and disclosure

[1] The table does not reflect the numerous informal actions the OCC has taken to ensure that violations of [illegible] corrected or did not occur.

review, the OCC has identified a range of potential violations of securities laws and then used its broad investigative powers to obtain needed testimonial or documentary evidence. The OCC has substantially the same enforcement authorities as the SEC under the Exchange Act as well as a range of administrative remedies available to the OCC as the primary regulator of national banks.

Although there are approximately 52 national banks with equity securities registered under the Exchange Act as of 1990, since 1985 the OCC has taken action resulting in the entry of 9 final orders of permanent injunction in U.S. District Court against banks and individuals for violations of the reporting and disclosure requirements of the Exchange Act.[2]

Under the Exchange Act, the OCC is the appropriate regulatory agency to undertake enforcement actions against bank transfer agents and bank municipal and government securities dealer departments and their associated persons to redress violations of law. Since 1985 the OCC has taken 8 actions.

Through its comprehensive disclosure review program, the OCC has required revision to disclosures and prevented violations of OCC regulations governing securities offerings. When offerings have proceeded in significant noncompliance with those regulations, the OCC has required national banks to offer purchasers an opportunity to rescind purchases or required rescission of the entire offering. For violations occurring after August of 1989, the OCC also may assess civil money penalties for violations of its offering circular regulations by national banks or institution affiliated parties. (Financial Institutions Reform, Recovery, and Enforcement Act of 1989, P.L. 101-73, 907, 103 Stat. 183 (1989)). The OCC has several pending investigations of potential violations of securities offering regulations that may result in civil money penalty assessments using these relatively new authorities provided under FIRREA.

Banking law violations often result in, or are closely interrelated with, securities law violations. For example, failure to disclose conduct that violates regulatory restrictions on insider transactions can violate line item disclosure obligations or general antifraud provisions of securities laws. Because of this interrelationship, the OCC has integrated its banking and securities law enforcement efforts. In one case, the OCC prosecuted a removal, civil money penalty, and cease and desist action against a bank based on insider misconduct. Using the same staff that handled those actions and the securities staff, the OCC also brought actions in United States District Court against the bank and the insider for failing to make disclosures concerning these insider activities required under the Exchange Act and the OCC's implementing regulations. Enforcement staff members who were thoroughly familiar with the details of the insider violations were of considerable assistance to the securities litigators in preparing the injunctive actions. OCC examiners worked closely with the legal staff in developing the complex factual evidence supporting all of these actions. All of these actions were favorably settled resulting in a consensual removal order, civil money penalties, cease and desist order, and securities injunctions.

In appropriate cases, the OCC has combined securities and banking enforcement actions in a single action. For example, cease and desist and removal orders have been based on misconduct that violates both banking and securities laws. In such cases, the OCC's securities and other enforcement staff have worked closely together, with examination staff, in developing and prosecuting the actions.

Question 10

Of the enforcement cases initiated by your agency, how many were commenced as the result of the agency's review of depository institution filings?

Response to Question 10

The OCC does not maintain a record of how many enforcement cases were initiated as the result of the review of securities filings. However, there is no question that the securities filing review process has revealed a number of violations of securities and banking laws.[3] (*See* Response to Question 9 for further information on OCC securities enforcement). For example, relatively simple, yet required, disclosure information, such as principal shareholder ownership tables, can reveal significant potential violations of law, e.g., that a shareholder failed to file a required change in bank control notice. Reviews of bank annual meeting proxy materials have revealed that directors were

[2] [illegible]

[3] [illegible]

employed in businesses principally engaged in the underwriting of securities, in violation of the Glass-Steagall Act. Such directors have been removed from slates of proposed directors or required to resign.

Question 11

During the past five years, how many publicly held depository institutions under your jurisdiction failed or were otherwise the subject of an assisted transaction by the FDIC? How many of these institutions were the subject of enforcement actions for violations of sections 12, 13, 14, and 16 of the Exchange Act?

Response to Question 11

During the past five years, six banks failed which were under the OCC's 12(i) jurisdiction. Two of those banks were the subjects of securities enforcement actions and all were required to make extensive disclosures about their condition. All six were the subjects of non-securities enforcement actions due to their condition.

Question 12

Does your agency support amending sections 3(a) (2) and 3(a) (5) of the Securities Act and section 12(i) of the Exchange Act? If so, should this measure be undertaken alone or in conjunction with comprehensive financial services restructuring legislation?

Response to Question 12

The OCC's response to Question 12 is discussed fully in the introductory paragraphs of the cover letter. However, we would like to state briefly once again our position that repeal of section 12(i) of the Exchange Act and amendment of sections 3(a) (2) and 3(a) (5) of the Securities Act should be considered only in the context of a comprehensive plan modernizing the structure and regulation of the financial services industry. Functional regulation, to be meaningful and effective, must be carefully implemented and designed to ensure that any new regulatory scheme based on this principle does not result in duplicative or inconsistent regulation of affected parties and institutions. Section 12(i), 3(a) (2), and 3(a) (5) currently place securities oversight responsibilities with agencies that can handle these responsibilities in an effective and efficient manner. In the context of a comprehensive restructuring of the bank regulatory system, which alters the allocation of regulatory responsibilities along the lines of functional regulation, it may be appropriate to reexamine sections 12(i), 3(a) (2), and 3(a) (5). In the absence of such analysis, we believe it is premature to consider repealing section 12(i) and amending sections 3(a) (2) and 3(a) (5) independently.

APPENDIX B

Three examples of securities disclosure documents involving national banks experiencing difficulties at time of disclosure:

1. Century National Bank, Jacksonville, Fla (Registered under section 12(i) of the Securities Exchange Act of 1934)

   A. Offering Circular for preferred stock, which was reviewed by OCC and declared effective on June 4, 1984, included the following disclosures:

      - A pending FDIC section 8(a) action to terminate the bank's deposit insurance if $1.4M in capital were not raised by September 15, 1984.
      - Action by the Comptroller to shorten the time period for the correction of the unsafe and unsound practices (including inadequate capital) stated in the FDIC's Order of Correction from September 15, 1984, to July 2, 1984.
      - A Cease and Desist Order with the OCC requiring the bank to achieve and maintain a 7 percent capital to asset ratio, among other things (inadequate capital).
      - A negative book value of the bank's common stock and the resulting financial dilution effect for new investors.
      - The lack of ability to pay dividends.
      - The possible removal from the minority bank program unless a majority of the shareholders purchased securities and the effect of such a removal.
      - The negative equity capital position of $103,000.
      - Loan losses, 12 U.S.C. 84 violations and OCC's intention to investigate whether penalties should be pursued
      - A bonding claim from possible fraudulent or dishonest acts by a former officer
      - Delinquent loans by present and former directors and officers

- The going concern opinion of the accountants.

About two weeks later, the OCC directed the bank to suspend the offering of securities and accept no further subscriptions under the circular dated June 4, 1984. This action was taken because an OCC examination in process indicated that the bank was preliminarily insolvent (in terms of both equity and primary capital) and could be declared insolvent as of June 29, 1984. In early July 1984, the OCC directed the bank to return all subscription funds and advised the bank that a revised offering circular would be required if it wished to continue the offering. All subscription funds were returned. The revised circular was required to include disclosure of subsequent events as uncovered by the OCC during its examination of the bank, including the risk of loss from insolvency. The OCC also directed the bank to establish an independent third party escrow account to hold subscription funds for the protection of investors.

B. Supplemental Offering Circular filed by the bank in August 1984, which was declared effective following OCC review and comment, disclosed:

- The negative equity capital and $71,000 in statutory capital.

- The risk of insolvency and OCC examination in process.

- A letter sent by the FDIC to the bank on August 20, 1984, stating the FDIC's intention to proceed to terminate its insurance under section 8(a) and the scheduled hearing date.

- Treasury Department claims resulting from failure to comply with rules on treatment of deposits of public money.

- Revisions to financial statements for March 1984 and 1983.

- Pending Civil Money Penalty assessments by OCC.

- Pending litigation.

The bank was declared insolvent by the OCC in [illegible] 1984.

2. [illegible] National Bank [illegible] County [illegible] section 12(i) of the Securities [illegible]

A. Proxy materials reviewed by the OCC for an annual meeting dated May 11, 1983. The proxy materials disclosed:

- Cease and Desist Order issued by the OCC, its terms, and the status of bank compliance thereunder.

- Proposed amendment to the bank's Articles of Association to increase capital to comply with the requirements of the Cease and Desist Order.

- Change in control of the bank subject to OCC's review.

B. Offering circular for a sale of common stock declared effective following review and comments by the OCC as of April 2, 1984. The Circular disclosed:

- The bank's need for capital.

- The deterioration in the bank's loan portfolio (and loan losses).

- Lack of earnings.

- Lack of ability to pay dividends.

- Change in control and management.

- Cease and Desist Order and compliance status.

- Related party transactions.

C. Proxy materials reviewed by the OCC for an annual meeting dated April 27, 1984. The proxy materials disclosed:

- Changes in management.

- Amended Cease and Desist Order and compliance.

- A material transaction by the bank involving the purchase of certain notes described in the materials.

The bank was later declared insolvent by the OCC due to fraudulent actions of the new controlling owners relating to the purchase of the notes as disclosed in the proxy materials.

3. Sunbelt National Bank, Dallas, TX. (Not registered under section 12(i) but still subject to OCC review of

securities offerings by national banks under OCC regulations at 12 CFR 16.)

A. Offering Circular reviewed by the OCC. During review of the circular, the OCC questioned the bank at length regarding the accuracy of financial information in the proposed circular, particularly regarding the bank's allowance for loan losses. The OCC required the bank to perform an independent review of its loan portfolio while the circular was under review and management presented results to the OCC which it represented as adequate and accurate. The OCC then declared the circular effective, indicating that if additional facts came to OCC attention which made the disclosure false or misleading, the OCC would suspend the offering and require rescission as appropriate. The OCC advised the bank of the antifraud requirements of the federal securities law. The circular disclosed:

- The questionable viability of the institution and the fact that the bank performed its own loan review at the request of the OCC and identified itself as insolvent but that directors purchased charge-off loans making the bank, in their opinion, solvent.
- Order of Correction by FDIC (section 8(a) action).
- Inadequate capital (negative equity capital ratio of 4.52 percent).
- Loan portfolio and loan losses.
- Cease and Desist Order.
- Inability to pay dividends.
- Lack of earnings.
- Liquidity problems.
- Lack of blanket bond insurance
- Violations of law.
- Criticized insider loans

About one month later, on January 20, 1987, based on the preliminary results of an OCC examination, the OCC required the bank to suspend the offering. The offering was withdrawn and all funds were returned to investors. The OCC later declared the bank insolvent.

APPENDIX C

The OCC has taken a number of formal and informal enforcement actions to redress violations of law relating to the securities activities of national banks. This appendix contains summaries of formal enforcement actions the OCC has taken since 1983 in each of the several major areas of bank securities activities for which it has enforcement authority.

Exchange Act Section 12(i)

1. *OCC v. Torrence National Bank, Torrence, California et al.*, C.A. No. 87-0884, U.S.D.C. D.C. (1987), involved a complaint for permanent injunctive relief, to which the defendant bank and individaul defendants, all bank directors, consented, without admitting or denying any of the allegations in the complaint. The complaint contained allegations that the bank violated the reporting requirements of section 13 of the Exchange Act by failing to file in a timely manner required quarterly and annual reports. The complaint also contained allegations that several directors individually violated the beneficial ownership reporting requirements of sections 13 and 16 of the Exchange Act by failing to file required reports of beneficial ownership. The final order enjoined the bank and the directors from further Exchange Act violations and required the directors to file required beneficial ownership reports.

2. *OCC v. T. Bertram Lance and Calhoun First National Bank*, C.A. No. C86-19R, U.S.D.C. D.Ga (1986) involved a complaint for permanent injunctive relief for violations of sections 13(a) and 14(a) of the Exchange Act. The complaint alleged that the defendants failed to disclose (1) check kiting, nominee loans, credit life insurance rebates, and other transactions that benefitted Lance, often to the detriment of the bank, and (2) loan participations from other banks that were recommended or directed by Lance at a time when he had had a material indirect interest in maintaining substantial personal borrowing relationships with the banks selling those participations. The bank consented to the entry of a permanent injunction, without admitting or denying the allegations of the complaint, and agreed to amend its securities filings to disclose all information on the above transactions required to be disclosed under the federal securities laws. Lance also consented, without admitting or denying the allegations of the complaint, to entry of a permanent injunction and agreed to provide the bank with all information on the above transactions necessary to make the required disclosures.

3. *Comptroller of the Currency v. Farmers National Bank of Appomattox, Appomattox, Virginia*, C.A. No. 86-1708, U.S.D.C. D.C. (1986) involved a complaint for

permanent injunctive relief to which the bank consented without admitting or denying any of the allegations in the complaint. The complaint contained allegations that the bank violated sections 12, 13, and 14 of the Exchange Act by (1) distributing proxy materials to shareholders without filing these materials with the OCC before distribution, (2) distributing proxy materials that contained information that was false or misleading, (3) failing to file any of its quarterly or annual reports on time since the bank first registered its securities, and (4) filing quarterly or annual reports that contained insufficient or misleading information. Finally the OCC alleged that the bank failed to file its registration statement with the OCC until 11 years after its securities were required to be registered. The final order of permanent injunction enjoined the bank from further violations of these provisions of the securities laws and OCC implementing regulations, required the bank to rehold its 1986 annual meeting and required the bank to file amendments to various annual and quarterly reports.

4. *OCC v. New World National Bank, Pittsburgh, Pennsylvania*, C.A. No. 86-2047, U.S.D.C. D.C. (1986), involved a complaint for permanent injunctive relief to which the bank consented without admitting or denying any of the allegations in the complaint. The complaint contained allegations that the bank violated section 13 of the Exchange Act by failing to file on a timely basis required annual and quarterly periodic reports of the bank's condition. Further, the complaint alleged that the reports, as filed, contained material misstatements of material fact. The final order of permanent injunction enjoined the bank from further violations of section 13 and OCC implementing regulations and required the bank to file amendments to various annual and quarterly reports.

5. *Comptroller of the Currency v. Industrial National Bank of East Chicago, East Chicago, Indiana*, C.A. No. 86-0310, U.S.D.C. D.C. (1986), involved a complaint for permanent injunctive relief, to which the bank consented without admitting or denying any of the allegations contained in the complaint. The complaint contained allegations that the bank violated sections 13 and 14 of the Exchange Act by (1) distributing proxy materials to shareholders without filing these materials with the OCC before distribution, (2) distributing proxy materials that contained information that was false or misleading, (3) failing to file any of its quarterly or annual reports in a timely manner and, (4) in some instances, failing entirely to file required periodic reports. The final order of permanent injunction enjoined the bank from further violations of these provisions of the securities laws and OCC implementing regulations, and required the bank to solicit proxies and file the required periodic reports in accordance with the requirements of the federal securities laws and regulations.

6. *OCC v. Commonwealth National Bank, Mobile, Alabama*, C.A. No. 85-0899, U.S.D.C. D.C. (1985), involved a complaint for permanent injunctive relief to which the bank consented without admitting or denying any of the allegations in the complaint. The complaint contained allegations that the bank violated section 13 of the Exchange Act by failing to file on a timely basis required quarterly periodic reports of the bank's condition. The final order of permanent injunction enjoined the bank from further violations of section 13 and OCC implementing regulations.

7. *Comptroller of the Currency v. Central National Bank, Canajoharie, New York*, C.A. No.85-3177, U.S.D.C. D.C. (1985), involved a complaint for a permanent injunction against the bank and a number of individual bank directors for violations of the beneficial ownership and periodic reporting and proxy solicitation requirements of the Securities Exchange Act of 1934. The bank and the individuals consented to entry of an order of permanent injunction without admitting or denying the allegations of the complaint, prohibiting them from further violations of sections 13 and 14 of the Exchange Act and requiring the reholding of a contested election for directors.

8. *Selby v. Huron National Bank, Rogers City, Michigan*, C.A. No. 85-2686, U.S.D.C. D.C. (1985), involved a complaint for a permanent injunction against the bank for violations of sections 13 and 14 of the Exchange Act to which the bank consented without admitting or denying the underlying allegations. The OCC in its complaint alleged that the bank failed to file timely, accurate, or complete annual and quarterly reports and proxy materials for distribution to shareholders. The final order of permanent injunction enjoined the bank from further violations of these provisions of the securities laws and OCC implementing regulations, and required the bank to file the required periodic reports in accordance with the requirements of the federal securities laws and regulations.

9. *Conover v. Glenn, et al.*, C.A. No. 85-1208, U.S.D.C. D.C. (1985) involved a complaint for a permanent injuction against four individuals for violations of sections 13, 14, and 16 of the Exchange Act, to which the defendants consented, without admitting or denying the underlying allegations. The OCC in its complaint alleged that the individuals (1) acquired a beneficial ownership interest in approximately 9.9 percent of the shares of a national bank that were registered under the Exchange Act and failed to file required beneficial ownership reports, (2) acquired beneficial ownership of additional shares of bank stock and failed to file required state-

ments of changes in beneficial ownership, and (3) solicited proxies by means of proxy solicitation materials in that such proxy statements were false and misleading and failed to contain required information under OCC regulations. The final order of permanent injunction enjoined the defendants from further violations of these provisions of the securities laws and OCC implementing regulations, and required the individuals to refile proxy solicitation materials with the OCC should those individuals still decide to seek election as bank directors.

10. *SEC and OCC v. Charles D. Fraser*, C.A. No. 84-2652, U.S.D.C. D.C. (1984), involved a complaint brought jointly by both the OCC and the SEC for permanent injunction, to which Fraser consented without admitting or denying any allegations. The complaint alleged that Fraser, while President of First National Bank of Midland, Midland, Texas, violated the antifraud provisions of the Securities Exchange Act of 1934, section 10(b), and rule 10b-5 thereunder promulgated by the SEC, and aided and abetted violations of Exchange Act section 13(a) and rules promulgated thereunder by the OCC at 12 CFR 11. In particular, the OCC and SEC alleged that Fraser caused the bank, with a class of equity securities registered under the Exchange Act, to overstate its earnings and understate its allowance for loan and lease losses in its financial statements, and to fail to disclose adequately the risks in its loan portfolio for a number of reporting periods. The final order enjoined Fraser from further such violations of the Exchange Act.

Exchange Act Section 15B

1. *In the Matter of Bank of America, N.T. & S.A., et al.*, (1987), the OCC entered under authority of Exchange Act section 15B and made public an order to which all respondents consented, censuring Bank of America, N.T. & S.A., and requiring it to undertake certain remedial measures, for violations of the Exchange Act and rules of the Municipal Securities Rulemaking Board. The OCC found that, in connection with the conversion of the bank dealer department's securities trade processing and recordkeeping system, for at least six months the bank had engaged in securities trades with customers without disclosing that it was unable to maintain and keep current accurate and adequate books and records or an efficient back office operation. Further, the OCC found that, for over one year, the bank had issued safekeeping receipts in certain securities transactions, whereby the bank had sold securities to customer accounts through the issuance of due bills, but in fact had not purchased the securities for those customer accounts. The bank had engaged in the issuance of due bills and used customer funds without advising customers that it had not purchased securities for their accounts. The OCC also suspended for two to five days three supervisors, all qualified as municipal securities principals, for their failure to supervise with a view to preventing these violations.

2. *In the Matter of *** National Bank* (1987)[1] Order issued pursuant to 12 U.S.C. 1818, to which the bank consented without admitting or denying wrongdoing, for violations of 15 U.S.C. 78o-4(c) (1) and Municipal Securities Rulemaking Board (MSRB) rules G-2, G-3 and G-27 in connection with purchases and sales of municipal securities while at least 24 dealer department employees were not properly qualified as municipal securities representatives or municipal securities principals, and failure to supervise bank employees committing the cited violations of law. The order required the bank to correct the cited violations of law and adhere to all applicable requirements of federal securities laws and MSRB rules, and to implement remedial measures designed to prevent recurrence of the cited violations.

3. *In the Matter of First National Bank and Trust Company of Tulsa, Tulsa, Oklahoma, et al.*, (1985), the OCC entered under authority of Exchange Act section 15B and made public an order to which all parties consented, finding that the bank, through its municipal securities dealer department, as well as certain employees, violated the antifraud provisions of the federal securities laws and rules of the MSRB by engaging in a variety of customer abuses. These violations included executing unauthorized trades for customer accounts, churning customer accounts, switching profits among accounts, salesmen sharing in customer profits, selling securities at off-market prices, and making unsuitable trades. The OCC also found that the bank and certain employees aided and abetted securities law violations and failed to supervise employees' violations of these provisions. The OCC censured the bank and imposed various remedial measures, and imposed various sanctions against individuals, including bars from acting in a supervisory capacity against several municipal securities principals, and censures, suspensions ranging from 10 to 30 days, and a bar against sales employees.

4. *In the Matter of Merchants National Bank of Indianapolis, Indiana*, (1985), the OCC entered under authority of Exchange Act section 15B and made public an order to which all parties consented, censuring the

[1] The names of the parties have [illegible] brought pursuant to 12 U.S.C. [illegible] and the Comprehensive Thrift [illegible] Taxpayer Recovery Act of 1990.

[illegible] and required the implementation of various remedial measures, among them, violations of the anti-fraud provisions of the federal securities laws and rules of the MSRB through false valuations of the bank's municipal securities trading account, resulting in overstatement of bank income in call reports filed with the OCC, and for failure to supervise employees committing such violations. The OCC also took action against various individuals, including censures, 30 and 45 day suspensions, and bars from serving in a supervisory capacity with a municipal securities dealer.

5. *In the Matter of Thomas Grove* (1985), the OCC entered under authority of Exchange Act section 15B and made public an order to which the respondent consented without admitting or denying the underlying allegations. Through the order the OCC censured the respondent and found that he willfully violated MSRB rule G-28 by failing to notify a registered broker-dealer that its employee had opened a trading account as a "customer" of Packers National Bank, Omaha, Nebraska.

6. *In the Matter of Gary Lynn Moore* (1985), the OCC entered under authority of Exchange Act section 15B and made public an order to which the respondent consented without admitting or denying the underlying allegations. Through the order the OCC suspended Moore from association with any municipal securities dealer for a period of 3 days for his willfully making a false statement relating to his prior disciplinary history in his application for qualification as a municipal securities representative.

Exchange Act Section 17A

1. *In the Matter of First National Bank of Boston* (1990), involved an order to which the bank consented, without admitting or denying any wrongdoing, and which the OCC made public. The order, the first instituted by the OCC under authority of section 17A, required the bank to undertake certain remedial measures for violations of the Exchange Act and rules of the SEC applicable to registered transfer agents. The OCC found that the bank, through its corporate trust division, failed to (1) respond in a timely manner to customer inquiries concerning items presented for transfer, requests for confirmation of possession of certificates presented for transfer and claims for interest payments, (2) maintain and keep current adequate records of aged record differences and inquiries received but not responded to, (3) accurately and promptly post and keep current [illegible] files, maintain [illegible] (4) report [illegible] property.

2. *Formal Agreement by and between *** National Bank and the OCC* (1985), involved the bank's failure to comply with certain transfer agent rules and OCC rules relating to fiduciary activities and required the bank, among other things, to: (1) perform studies and adopt procedures relating to the bank's fiduciary activities; (2) adopt procedures to and achieve compliance with transfer agent rules, including maintenance of appropriate records, notification of record differences, safeguarding of funds and securities, and fingerprinting requirements; (3) make reports to issuers of aged record differences; (4) obtain an independent accountant's report of internal accounting controls; (5) accept no new transfer agent business pending correction of deficiencies noted in the internal accountant's report; and (6) reimburse customers for lost earnings suffered as a result of the bank's failure to invest idle trust cash balances.

3. *Agreement by and between *** Bank & Trust Company, N.A. and the OCC* (1983), involved the bank's failure to comply with certain transfer agent rules and required the bank to: document reconciliations of aged record differences of customer accounts, assure prompt processing, turn-around and forwarding of all items presented for transfer, adopt various remedial measures, perform management studies, and refrain from acting as transfer agent for any issuers other than those it already served prior to complying with all provisions of the agreement.

4. *Agreement by and between *** Bank of ***, N.A., and the OCC* (1983), involved the bank's failure to comply with certain transfer agent rules and required the bank to: reconcile out of proof conditions in shareholder, general and subsidiary ledgers, document reconciliations of all shareholder accounts on the day of each transaction, resolve existing record differences, implement measures to assure prompt turnaround of items presented for transfer, complete a study of management quality and depth, implement measures to promptly and correctly respond to shareholder inquiries, implement measures to reflect changes in outstanding shares of client registered investment companies, prevent unauthorized access to transfer recordkeeping systems, improve controls over unissued certificates, and implement proper audit procedures for the transfer agent function.

12 U.S.C. 1818

1. *In the Matter of L.P. Palumbo* (1991), the OCC assessed a $5,000 civil money penalty against Mr. L.P. Palumbo, President of Progressive National Bank of DeSoto Parish, Mansfield, Louisiana, for causing the bank to distribute an offering circular which had not been declared effective by the OCC pursuant to 12 CFR

16. In addition, Mr. Palumbo caused the bank to offer securities in five nonpublic offerings without filing required notices with the OCC. The OCC found that the securities offered through the nonpublic and public offerings exceeded the number of shares authorized by the bank's Articles of Association. The bank subsequently rescinded the offerings, returned subscriptions for the unauthorized stock, and reduced the capital accounts of the Bank. With limited exceptions, Mr. Palumbo admitted the facts and the existence of the violations alleged in the Notice of Assessment of Civil Money Penalty and paid the penalty.

2. *In the Matter of *** National Bank*, (1990) involved formal agreements with two national banks under authority of 12 U.S.C. 1818. The banks agreed, among other things, to ensure that in-house sweep account programs to sell parent holding company commercial paper or other obligations comply with federal securities laws, including requirements to make adequate disclosures to customers, and OCC examining guidelines. The banks also agreed to provide notice to the OCC and seek its prior review before reintroducing any sweep account program involving commercial paper.

3. *Agreement by and between *** Bank, N.A. and the OCC* (1988) involved the bank's (1) sale of various securitized assets in a manner which prompted the OCC to cite the bank for having violated the antifraud provisions of the federal securities laws and (2) sale of unregistered securities in violation of the Securities Act of 1933. The bank agreed to engage counsel to conduct various internal studies of these sales practices and provide customers the opportunity to rescind such purchases, and adopt policies to prevent the recurrence of such practices.

4. *Formal Agreements by and between *** and *** and the OCC*, (1987). Formal agreement issued under authority of 12 U.S.C. 1818, to which the individuals consented without admitting or denying any wrongdoing, for violations of the antifraud provisions of the federal securities laws. The violations arose in connection with the use by the individuals, formerly bank employees, of customer securities, purchased and held through the bank's discount brokerage operation, as margin to cover options trading obligations of the individuals. Pursuant to the orders, the individuals agreed to cease to act for a period of eleven months in any position in the bank or any other financial institution involving the purchase or sale of securities, the provision of fiduciary services to the public, or the handling of customer trust funds or securities.

5. *In the Matter of ****, (1985) involved the assessment of a civil money penalty against an individual for failure to comply with the prior notice requirements of the Change in Bank Control Act of 1978, 12 U.S.C. 1817(j), in connection with his acquisition of more than 10 percent of the stock of an insured national bank. The individual consented to the order without admitting or denying having violated the act. The OCC suspended its collection of the penalty based on the individual's prior divestiture of bank stock to a level that would not constitute a control interest in the subject bank and his agreement not to purchase any stock in any insured bank without first complying with the prior notice requirements of the act. Should the individual subsequently be found to have violated the act within five years of the date of the order, he agreed that he would pay the suspended penalty ($10,000) plus any other penalty that may be assessed.

6. *In the Matter of *** National Bank*, (1985) involved a national bank's issuance of securities in violation of the OCC's securities offering disclosure rules (12 CFR 16) in connection with the bank's initial offering of securities prior to the bank's opening. The OCC ordered the bank, which consented to the issuance of the order, not to engage in any acts or practices constituting violations of Part 16 by offering or selling securities without complying with the requirements of Part 16, or by utilizing an offering circular which is false and misleading in any material respect.

7. *In the Matter of the First National Bank of Maryland, Baltimore, Maryland*, (1984) involved an order to which the bank consented without admitting or denying any wrongdoing, the existence of which the OCC made public through a press release. Pursuant to the order, the bank was required to refrain from borrowing or lending customer securities unless it first complied with a number of conditions, including clarifying lending disclosures to securities customers in safekeeping agreements, obtaining customer authorization prior to borrowing or lending customer securities held in safekeeping, implementing policies addressing accounting and managerial controls over the securities lending function, developing fee sharing schedules for securities lending for safekeeping customers whose securities are being lent, and conducting a study to identify and compensate safekeeping customers whose securities were loaned or borrowed between January 1982 and June 1984.

* * *

562 — August 26, 1991

Your letter to William B. Glidden has been referred to me for a response.

According to your letter, you are a bank employee who is also a licensed registered representative having current NASD Series 7 registration.[1] You further state that you are affiliated with *** (***), a registered broker/dealer, and that your affiliation is in the form of a sole proprietorship where *** provides clearing services for trades. You have proposed that *** (bank) would conduct ... [full service] brokerage activity through you, and that you will lease space from the bank at a monthly rent "based on a percentage of the gross commissions." Your letter seeks the Office of the Comptroller of the Currency's (OCC) written opinion on this proposal, and our "suggestions" for ensuring "full compliance with all OCC guidelines."[1]

As you noted, your proposal raises several legal issues, including: 1) the permissibility of the proposed activities for national banks; 2) the ability of the bank to lease part of its premises to you as a means of conducting these activities, particularly in light of the fact that you are an officer of the bank; and 3) the use of the "dual employee" to perform the contemplated activities. Through the issuance of opinion letters, no objection letters, and approvals of certain corporate applications filed by national banks, the OCC has established certain principles governing the nature and scope of national banks' securities brokerage activities, and has set forth general guidelines for situations involving leasing of bank premises and sharing of bank employees.

The OCC has permitted national banks and their subsidiaries to conduct certain securities brokerage activities, on behalf of retail and institutional customers. *See, e.g.*, OCC Interpretive Letter No. 441 (February 17, 1988), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,665; OCC Interpretive Letter No. 406 (August 4, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,630; OCC Interpretive Letter No. 407 (August 4, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,631; OCC Interpretive Letter No. 408 (August 4, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,632. The authority of national banks to provide securities brokerage services has been conclusively established by judicial precedent. *See, e.g.*, *Securities Industry Association v. Comptroller of the Currency*, 577 F. Supp. 252 (D.D.C. 1983), *aff'd* 758 F.2d 739 (D.C. Cir. 1985), *cert. denied* 474 U.S. 1054 (1986) (brokerage issue), *rev'd* 479 U.S. 388 (1987) (branching issue); *see also Securities Industry Association v. Board of Governors of the Federal Reserve System*, 468 U.S. 207 (1984); *Securities Industry Association v. Board of Governors of the Federal Reserve System*, 821 F.2d 810 (D.C. Cir. 1987), *cert. denied*, 484 U.S. 1005 (1988) (bank holding company subsidiaries which are affiliated with national banks).

These decisions have been based on the express authority of 12 U.S.C. 24 (Seventh), which authorizes national banks to deal in securities and stock only to the extent that they purchase and sell such securities and stock "without recourse, solely upon the order, and for the account of, customers . . . ." The OCC has authorized brokerage by national banks for numerous types of securities. *See* OCC Interpretive Letter No. 363 (May 23, 1986), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,533, for a partial listing. Investment advice may also be provided in connection with the purchase and sale of securities on an agency basis. OCC Interpretive Letter No. 403 (December 9, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,627; OCC Interpretive Letter No. 386 (June 10, 1987), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,610; OCC Interpretive Letter No. 360 (April 16, 1986), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,530; *see also Decision of the Comptroller of the Currency Concerning an Application by American National Bank of Austin, Texas, to Establish an Operating Subsidiary to Provide Investment Advice*, (September 2, 1983), *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 99, 732. However, with certain limited exceptions, a national bank may not underwrite or deal in securities for its own account. *See* OCC Interpretive Letter No. 492 (October 29, 1989), *reprinted in* [1989-1990 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83, 075 (National bank and its subsidiary may purchase, sell, deal in and underwrite certain "investment securities" as authorized in 12 U.S.C. 24(Seventh) and 12 CFR 1).

Furthermore, national banks have been permitted to lease their premises to entities that engage in these activites, with rent based on a percentage of commissions. *See* OCC Interpretive Letter No. 533 (October 5, 1990), *reprinted in* [1990-1991 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 83,244, Interpretive Letter No. 441, *supra*, *see also* 12 CFR 7.7516 (1991), OCC Interpretive Letter No. 342 (May 22, 1985), *reprinted in* [1985-1987 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,512; OCC Interpretive Letter No. 274 (December 2, 1983), *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,438 (guidelines for leasing bank premises). Sometimes bank employees are shared with the tenants for the

purpose of assisting in the performance of securities brokerage activities. *See* Letter dated February 10, 1988, from William B. Glidden, Assistant Director, Legal Advisory Services Division (unpublished) (Glidden Letter); OCC Interpretive Letter Nos. 406 through 408, *supra*; Letter dated June 4, 1985, from Richard V. Fitzgerald, Chief Counsel, *reprinted in Office of the Comptroller of the Currency Quarterly Journal*, vol. 4, no. 3, p. 67, September 1985 (INVEST Letter).

Your letter does not specifically state what types of securities brokerage activities the bank wishes to engage in. To the extent that the bank's proposal involves securities brokerage activities which are consistent with the relevant statutes, OCC precedents and applicable case law, these activities would be permissible. If the bank's proposed activities differ from those which have been previously approved by the OCC, you may wish to consider whether the differences are material, whether the activities are legally permissible, and whether an advisory opinion from the OCC would be desirable. If you believe that the proposed activities are not consistent with these precedents, I suggest that you consult with your legal counsel and, if you seek additional guidance from the OCC, you should provide a written explanation of the nature and extent of the contemplated activities. Your communication should also include a detailed legal opinion which addresses the differences between the bank's proposal and OCC precedent, and identifies and discusses applicable case law, statutes, regulations, and OCC interpretive letters.

As the precedents cited above indicate, as a general rule, and within certain guidelines, percentage leases of national bank premises are permissible. Further, there is precedent for dual employee relationships between national banks and their tenants. However, my preliminary review of your proposal, based upon the limited facts set forth in your letter, focuses upon the leasing of bank premises to an insider. The OCC has strongly advised against leasing retail banking or lobby area space to bank employees, officers, directors, principal shareholders, or their immediate families for the purpose of conducting a personal business enterprise of the insider. "Such a situation raises serious questions of conflict of interest and self-dealing that a national bank 'should make a conscious attempt to avoid.'" Interpretive Letter No. 274, *supra*, *quoting from* Interpretive Letter dated August 8, 1977, from John G. Heimann, Comptroller of the Currency, *reprinted in* [1978-1979 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,007; *accord* OCC No Objection Letter No. 87-8 (November 17, 1987), *reprinted in* [1988-1989 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 84,037; Interpretive Letter No. 342, *supra*.

The potential for a conflict of interest is increased when the insider seeks to engage in an activity which the bank could perform on its own behalf. For example, the OCC has prohibited conflicts of interest in situations involving credit life insurance and small town insurance activities pursuant to 12 U.S.C. 92. *See, e.g.,* 12 CFR 2 (1991); OCC Interpretive Letter No. 281 (January 24, 1984), *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,445; OCC Interpretive Letter No. 258 (June 3, 1983), *reprinted in* [1983-1984 Transfer Binder] Fed. Banking L. Rep. (CCH) ¶ 85,422; (credit life insurance); letter dated July 21, 1989, from A. Duncan McFarlane, Director for Bank Supervision, Midwestern District (unpublished) (McFarlane Letter); letter dated December 24, 1975, from John E. Shockey, Deputy Chief Counsel (unpublished) (December 24 Letter); letter dated November 14, 1975, from Robert Bloom, First Deputy Comptroller for Policy (unpublished) (small town insurance). You should also be aware that the OCC has expressed its disapproval of a bank's lease of space to a brokerage firm owned by an insider:

> To do so may, at the very least, subject the bank and its directors to the charge that certain shareholders who are directors are receiving benefits not available to other bank shareholders. And, should the brokerage firm's customers suffer losses, public confidence in the bank may be diminished because of the perceived close relationship among the bank, its directors/insiders, and its brokerage firm lessee. Thus, the Comptroller views insider ownership of a brokerage firm lessee as a safety and soundness problem, which raises the specter of conflict of interest and self-dealing and which must be addressed by the bank's Board of Directors.

Letter dated August 24, 1988, from Elizabeth H. Corey, Attorney, p. 3 (unpublished).

In these situations, the OCC has determined that the insider has usurped a corporate opportunity to the detriment of the bank, by engaging in a bank-permissible activity for his personal benefit. The bank, not the insider, must reap the benefits of engaging in such activities.[2] This practice is generally discouraged be-

[2] For example, the OCC's regulations provide, in general, that commissions or income from the sale of credit life insurance by insiders must be credited to the income account of the bank, and that the insider may not retain [illegible]. See 12 CFR 2.4 and 2.6 (1991). However, [illegible] officers and employees may participate in a bonus or incentive plan under which payments based on credit life insurance [illegible] in cash or in kind out of the bank's funds. ... CFR 2.6 ... (emphasis added).

because it is inconsistent with the fiduciary relationship between insiders and the bank, and the common law duty of loyalty owed by officers and directors to the bank. Further, in some situations, the practice may warrant appropriate administrative actions, because it may constitute an unsafe and unsound banking practice, a breach of the insider's fiduciary obligations, or an unlawful distribution of the bank's income. *See* 12 U.S.C. 93(b) and 1818(b). Finally, criminal prosecution may be appropriate, pursuant to 18 U.S.C. 656, if misapplication of bank funds is involved.

The proposed transaction may be restructured in a way which avoids impermissible conflicts of interest and conforms to OCC precedent. In particular, the bank could lease its premises to ***, rather than you. Further, payment for ***'s use of the bank's premises, equipment, clerical staff, and goodwill, as well as reimbursement for the portion of your time spent performing duties as an employee of ***, should be paid by *** to the bank. In other words, the bank would not be leasing its premises to you, an insider, and *** would not compensate you directly for your services. This arrangement would avoid the conflict of interest concerns which would otherwise arise from a lease between an insider and a national bank, and the receipt of financial benefits by the insider as a result of engaging in a bank-permissible activity. In determining appropriate lease and compensation arrangements, it would be helpful if you reviewed similar programs outlined in the OCC precedents cited above, including the Glidden Letter, Interpretive Letter Nos. 406 through 408 and the INVEST Letter. The bank should also consult these precedents as it considers whether it needs to limit its liability, and/or provide for its indemnification, in connection with its lease with ***.

Assuming the bank resolves these issues, and structures an arrangement which complies with OCC precedent, you should also be aware that the relationship between *** and the bank must be at arm's length. Further, full disclosure to the bank's customers must be made of the relationship between you, *** and the bank. Tying arrangements between the sale of products and the bank's granting of credit are also prohibited. *See* 12 U.S.C. 1972.

In addition to the issues addressed above, you should be aware that the provisions of 12 U.S.C. 78 may apply to the bank's proposal. This statute provides, in general, that "[n]o officer, director, or employee of any corporation or unincorporated association, no partner or employee of any partnership, and no individual, primarily engaged in the issue, flotation, underwriting, public sale, or distribution, at wholesale or retail, or through syndicate participation, of stocks, bonds, or other similar securities, shall serve at the same time as an officer, director, or employee or any member bank . . . ." However, based on the facts contained in your letter, it is not possible for the OCC to advise you further in this regard.

In sum, the bank may engage in securities brokerage activities to the extent permissible under the relevant statutes and the OCC and judicial precedents cited above. Further, percentage leases and dual employee relationships which are consistent with OCC precedents are also not objectionable. However, in its current form, the bank's proposal raises serious questions regarding a potential conflict of interest, because it involves leasing bank premises to an insider for the purpose of conducting an activity which the bank may perform on its own behalf.

As a general matter, because your proposal appears to raise many issues under banking and securities laws (both state and federal), it may be advisable for you to consult with bank counsel and/or your own counsel as you develop your plans in this area.

Peter Liebesman
Assistant Director
Legal Advisory Services Division

* * *

No Objection Letters

91-2—June 13, 1991

This responds to your letter on behalf of Manufacturers Hanover Trust Company, the agent for a syndicate of national and state banks (collectively the banks) that recently have amended an existing credit facility with a manufacturing corporation (the company). Your letter requests confirmation of your opinion that appraisals would not be required in connection with that transaction under Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), 12 U.S.C. 3310, 3331-3351, or the appraisal regulation published by the Office of the Comptroller of the Currency (OCC), 55 Fed. Reg. 34,684, 34,696, August 24, 1990 (to be codified at 12 CFR 34.41 *et seq.*).

Facts

The banks entered into a credit facility with the company on December 31, 1989, and recently reached

[illegible]

agreement with the company on an amended credit facility. Under the amended facility, the amount of credit available has been reduced and, under certain circumstances, the banks will receive security for the full amount of the loans made to the company. The security will consist of liens on substantially all of the company's United States manufacturing plants. The liens will cover all real and personal property that make up the manufacturing plants. The banks also will take liens on trademarks and stock held by the company.

You have represented that the value of the real estate collateral (the plants' land and buildings) did not influence the bank's decision to extend credit to the company because the contribution of the real estate to the value of the collateral securing the loans is quite small compared to the contribution of the plants' equipment and the other collateral. Moreover, you state that the banks are taking the real estate liens in order to obtain certain advantages—such as access to the equipment and other personal property taken as collateral, the ability to sell a plant as an operating entity, and the ability to preclude transfer of the property to another creditor without the consent of the banks—rather than to perfect a security interest in real estate of a particular value. Finally, you state that all loans under the amended credit facility will be made on a recourse basis, and that the banks are looking to the company's earning ability for repayment, and not the liquidation value of the real property securing the lending agreement.

Discussion

Title XI of FIRREA required the OCC and other bank regulatory agencies to adopt regulations governing real estate appraisals used in connection with federally related transactions. Title XI of FIRREA defines a federally related transaction as "any real estate-related financial transaction which [the OCC] engages in, contracts for, or regulates . . . and [which] requires the services of an appraiser." 12 U.S.C. 3350(4). A real estate-related financial transaction is defined, *inter alia*, as "any transaction involving . . . the use of real property or interest in property as security for a loan or investment, including mortgage-backed securities." 12 U.S.C. 3350(5). Under these statutory provisions, a real estate-related financial transaction which does not require the services of an appraiser is not subject to the requirements of Title XI of FIRREA nor the OCC's appraisal regulation.

The OCC's appraisal regulation identifies certain real estate-related financial transactions for which the services of an appraiser are not required. *See* 12 CFR 34.43(a). However, the OCC recognizes that there are other real estate-related financial transactions, beyond those identified in the appraisal regulation, for which the services of an appraiser would not be required.

Under existing supervisory policies, the OCC generally would not require appraisals for real estate collateralized loans where the determination of credit quality does not depend on the value of the real estate.[1] With regard to this transaction, you state that the banks are looking to the cash flow generated by use of the plants' manufacturing equipment, and not the value of the real property collateral, as the source of repayment for loans under the amended credit facility. Moreover, you indicate that the liens are taken on the real estate solely to obtain control of the manufacturing facilities in the case of default, and not to recover on the value of the real estate collateral as isolated, individuals assets. Finally, you state that the bank's decision to extend credit to the company under the amended credit facility does not depend on the value of the real property collateral nor would a determination of the value of the real property collateral by an appraiser be material to the analysis or underwriting of the credit. This is supported by information you have provided which indicates that the book value of the real estate represents less than 10 percent of the value of all collateral securing the loan and that the value of the non-real estate collateral alone is several times the amount to be advanced under the amended credit facility.

Based on OCC regulations and supervisory policies and our analysis of the materials you submitted in connection with your request, the staff of the OCC will not object to the banks taking liens against the real property collateral involved in the amended credit facility without obtaining appraisals. This staff no objection position is issued in accordance with OCC Banking Circular 205 (July 26, 1985). Moreover our position is based on your representations that repayment of the loan does not depend on cash flow generated by the real estate, and that the credit quality of the loan does not depend on the value of the real estate, and that the real estate liens are taken for a purpose unrelated to recovering the value of the real estate as an isolated asset in the event of default.

As a final matter, we would emphasize that our position on the necessity of obtaining appraisals in connection with this transaction does not relieve bank management of the responsibility to have adequate evaluations and supporting documentation regarding the value of any collateral that is taken in connection with a decision to

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[1] See [illegible] Real Estate Appraisal [illegible] Lending, Banking Circular [illegible] the [illegible] Real Estate Appraisal [illegible] dures [illegible]

extend new or additional funds to a borrower. Sound banking practice dictates that national banks adopt and employ adequate collateral evaluation policies, including appropriate appraisal procedures, to reduce their exposure to credit risk.

Robert B. Serino
Deputy Chief Counsel

Attachment A

March 19, 1991

J. Virgil Mattingly
General Counsel
Board of Governors of the
Federal Reserve System
Washington, D.C. 20551

Robert B. Serino
Acting Chief Counsel
Comptroller of the Currency
Washington, D.C. 20219

Dear Sirs:

A syndicate of banks, for which Manufacturers Hanover Trust Company is the agent (the agent), intends to amend an existing credit facility (the facility) for *** *** (the company) so as to alter certain terms of the facility and to provide for the creation, in certain circumstances, of a lien on manufacturing facilities and other property, both real and personal, of the company. We conclude, as counsel to the agent, that state member and national banks in the syndicate are not required to obtain real estate appraisals of these manufacturing facilities or other real property under the real estate appraisal regulations (the appraisal regulations) recently adopted by the Board of Governors of the Federal Reserve System (Board) and the Office of the Comptroller of the Currency (OCC) (collectively, the regulators).[1] We request written confirmation of our conclusion.

Because the syndicate of banks involved includes national banks and state member banks, we request that the Board and the OCC make every effort to coordinate their responses. It is crucial that we obtain a response as soon as possible because the facility is expected to be amended very soon and because, if appraisals are required, the complex process of obtaining appraisals of the company's manufacturing plants would have to begin immediately.

The facility was initially entered into on December 31, 1989. *** The bank syndicate has determined that it will continue to make credit available under the facility if the facility is amended so that the amount of credit available is reduced and so that the bank syndicate obtains security for the entire amount borrowed in certain circumstances, such as if the amount borrowed exceeds a certain minimum. The security will include liens on substantially all the United States manufacturing facilities (the plants) of the company. These liens will cover all the property, including real property, that is part of the plants. In addition, the security will include a lien on a building used for a variety of corporate purposes, such as research and development (the tech center). Other security, which will not involve real estate, will also be taken. This security will include liens on the principal trademarks owned by the company and stock held by the company (including stock in a wholly owned subsidiary). The loans under the facility will be made on a recourse basis, and the bank syndicate is looking to the company for repayment rather than to the property securing the facility.

Under the appraisal regulations, a real estate appraisal is implicitly required for real estate-related transactions other than transactions which meet certain specific exemptions. For the reasons described below, we conclude that an appraisal of the plants and the tech center is not required by the appraisal regulations or the statute which instructs the regulators to adopt the appraisal regulations.

The statute instructing the regulators to adopt the appraisal regulations, title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), does not require a real estate appraisal for the taking of a lien on the plants and the tech center. Indeed, title XI does not provide that appraisals are generally required for real estate-related transactions. Title XI sets out minimum standards for appraisals if they are required, rather than establishing requirements as to when such appraisals are required.

The appraisal regulations, however, imply that real estate appraisals are required for "real estate-related financial transactions," which are defined as including "any transaction involving . . . [t]he use of real property or interests in property as security for a loan or investment . . . ."[2] The regulations do not further describe transactions involving the use of real property as

1. [illegible]

2. [illegible] (OCC).

security.[3] The intent of the regulators is described in the release issued in connection with the appraisal regulations:

> The [regulator] has adopted this regulation to improve the safety and soundness of all financial institutions [...] within the [Regulator's] jurisdiction. The soundness of real estate loans and investments made by financial institutions covered by title XI [of FIRREA] depends on the adequacy of the underwriting or analysis used to support these transactions. A real estate appraisal is one of several essential components of the lending process.[4]

In the instant case, the purpose of the regulators is not served by a real estate appraisal of the plants. The value of the plants' land and buildings has not influenced the bank syndicate's decision to extend credit under the facility. *** *** *** The lien on the plants' buildings and land is important as an incident to the collateral security package generally: (i) the mortgage on the land ensures access to the equipment and other personal property to be subjected to a security interest[5] and (ii) the buildings are necessary for the sale of an operating plant as an entity to a user. Encumbering the plants precludes transfer to, or seizure by, another creditor without the bank syndicate's consent. The value of the plants arises out of the use of the manufacturing equipment to generate cash flow from operations. **** **** **** ****

A real estate appraiser is not qualified to assess the value of the operations of a manufacturing plant or the value of operating equipment. A real estate appraiser would, of course, be qualified to appraise the value of the plants' land and building but this value is not a factor in the decision to extend credit.

The intent of the regulators is only served if real estate appraisals are obtained in situations where the appraisals serve some purpose. If the value of real estate, as that value can usefully be assessed by a real estate appraiser, is not a factor in the decision to extend credit, then the loan should not be classified as a transaction involving the "use of real property as . . . security for a loan" for which real estate appraisals are required. Thus the facility should not be classified as a real estate-related financial transaction for which real estate appraisals are required.

There is regulatory precedent for excluding extensions of credit such as the facility from the definition of real estate loans. The Office of Thrift Supervision (OTS) has adopted appraisal regulations (OTS appraisal regulations) which are identical in all relevant respects to those of the regulators.[6] In the release accompanying the OTS appraisal regulations, the OTS explained that, prior to the OTS appraisal regulations, the regulations of the OTS contained exemptions from the OTS's appraisal requirement for home improvement or home equity loans in which, among other conditions, the thrift lender relied "substantially upon other factors, such as the general credit standing of the borrower, guaranties or security other than the real estate . . . as the primary security for the loan.[7] Real estate loans, by contrast, are defined as loans in which the thrift lender relied "substantially upon the real estate as the primary security for the loan."[8] The OTS release then states that "[h]ence, the OTS's current regulations make clear that where a loan is truly based on the creditworthiness of the borrower and not on real estate as the primary security for the loan, then the appraisal requirements of [the OTS appraisal regulations] would not apply."[9]

Similar interpretations have been made in instances which did not involve the appraisal regulations. The Board's Examination Manual, which states that appraisals are generally expected for loans secured by real estate, provides that "[l]oans granted on the general credit standing and forecast of income of the borrower which are secured by liens on real estate as a prudent banking practice" are not considered "real estate loans."[10] The OCC has issued regulations which provide that "loans where the association looks for repayment by relying primarily on the borrower's general credit standing and forecast of income" are not "real estate loans."[11] This definition interprets a statute which applies to "loans or extensions of credit secured by liens on interests in real estate."[12]

Even if the amendment of the facility is deemed to be part of a real estate-related financial transaction, an appraisal of the plants does not appear to be required because of the "abundance of caution" exemption to the appraisal requirements. This exemption provides that an appraisal is not required if a lien on real property has been taken as collateral solely through an abun-

[3] The appraisal regulations refer to transactions involving "interests in property," but this must be interpreted to mean transactions involving interests in real property

[4] 55 Fed Reg 27,762 (Board), 55 Fed Reg at 34 685 (OCC)

[5] Having the mortgage precludes disputes about whether personal property is or is not a fixture, an area of law which varies from state to state, is uncertain in result and which lenders take great pains to avoid

[6] 55 Fed Reg 34,532 (Aug 23 1990) 12 CFR 564.1 et seq

[7] 55 Fed Reg at 34 537 citing 12 CFR 561.12

[8] 55 Fed Reg at 34 536 citing 12 CFR 545.31(a)

[9] 55 Fed Reg at 34,537

[10] Board Commercial Bank Examination Manual [illegible]

[11] 12 CFR 34 3

[12] Federal Reserve Act [illegible]

abundance of caution and the terms of the transaction have not been made more favorable by the lien.[13]

As stated above, the bank syndicate's decision to continue to extend credit under the facility is not influenced by the value of the plants' land and buildings, and a real estate appraisal is not useful. Thus, the terms of the facility were not made more favorable to the company by the value of the lien on the plants if value is interpreted as the value that a real estate appraiser could usefully appraise. The abundance of caution exemption should therefore exempt the lien on the plants from the appraisal requirements.

The bank syndicate will also be taking a lien on the real estate of the tech center. However, the terms of the facility have not been made more favorable than they would have been in the absence of a lien on the tech center. Thus no appraisal of the tech center is required under the abundance of caution exemption.

Finally, we note that taking real estate appraisals on all the plants and the tech center will impose a large expense and may impose significant delays on the extensions of credit under the facility. These expenses and delays will be increased by the fact that the value of the real property of the plants will be difficult for a real estate appraiser to assess, because the properties are part of manufacturing facilities.

We hereby request confidential treatment for this letter on the basis that information in this letter is not generally available to the public and could cause competitive harm and therefore is exempt from disclosure under the Freedom of Information Act.

For the reasons discussed above, we conclude that no appraisal of the plants or the tech center is required under the appraisal regulations. We request your written confirmation of our conclusion. Because time is of the essence for the facility, we request that you respond as soon as possible.

Glenn D. Kesselhaut
David L. Pelsenthal
Simpson Thacher & Bartlett

Attachment B

May [illegible] 1991

[illegible] regarding our letter of March 19, 1991, in which we request confirmation [illegible] required in connection with [illegible] credit to *** *** (the company) by a syndicate of banks for which Manufacturers Hanover Trust Company (MHT) is the agent. You have asked for the two following items (all terms below are used as defined in our letter of March 19):

(1) Evidence that the value of the tech center and the value of the land and the buildings of the plants did not influence the decision to extend credit under the facility; and

(2) An explanation of why the bank syndicate does not take a lien only on the equipment of the plants and an appurtenant easement for the real estate.

<u>Evidence Regarding the Value of the Tech Center and the Land and Buildings of the Plants.</u>

We informed you in our letter of March 19 that the value of the tech center and the value of the land and buildings of the plants did not influence the decision to extend credit under the facility. You have asked for evidence in support of this statement.

The absence of reliance on the values of the tech center and the land and buildings of the plants is demonstrated by the memorandum attached as Attachment 1, which was prepared by an officer of MHT in January 1991. We provide this memorandum, which was prepared for MHT's internal purposes only, solely for the purposes of this discussion as to real estate appraisals. The memorandum describes the value of the assets of the company if the company ceased to operate and its assets were sold. The memorandum makes several negative assumptions about the future of the company which are appropriate for purposes of collateral valuation. These assumptions do not represent a judgment by MHT about the future of the company.

Because the memorandum was prepared shortly before the amendment of the facility, it gives a good indication of the relative importance assigned by the agent to the collateral value of the company's assets at the time of the amendment. MHT as agent negotiated the terms of the amendment on behalf of the bank syndicate, and the factors that influenced the agent are factors that influenced the terms of the amendment. Certain assets described in the memorandum are not included in the collateral which will be taken by the bank syndicate.[1] It is worth noting that the collateral secures

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[1] The collateral for the facility [illegible] the following [illegible] in the memorandum [illegible]

[illegible] 1991

the maximum amount available under the facility, $1.75 billion, plus $4.2 billion of other existing commitments, indebtedness, guarantees and letter of credit reimbursement obligations.

*** if the collateral had to be liquidated, the value of the plants as collateral arises from *** *** *** ***[2]. *** ***. There is no value attached to the land or buildings of the plants separately from the value of the plants as operating enterprises. Also, the memorandum specifically states *** ***. Because no collateral value is given to any asset on the basis of its value as real estate, there is no asset value described in the memorandum that a real estate appraiser could usefully confirm.

In addition, you requested the book values used by the company in accounting for the assets pledged to the bank syndicate. These figures are not valid indications of the value of the collateral, and particularly of the plants, to the bank syndicate. The book figures for the plants are based on historical costs of the plants and fixed depreciation schedules, which bear little relationship to sales values.

Perhaps the clearest indication of the misleading nature of the book figures are the figures concerning the tech center. The total amount of the book value of the tech center based on these estimates is *** but, as described in the memorandum in Attachment 1, ***

Also, the book figures for the tech center are *** ***.
There are additional reasons why the book value is not a valid indication of collateral value. First, the book value of the plants does not include in-plant tooling (which is specialized equipment used to produce a specific car or truck model) because the value of such tooling is allocated over all of the company's (and its subsidiaries') plants and some of its suppliers' plants. The company is not able to allocate the total value of tooling to the plants in which the bank syndicate has a lien. The total book value of all the tooling is $2.5 billion.

*** ***

Thus, the book figures are not useful in determining whether real estate appraisals are needed. The information that we have provided, both in this letter and our March 19 letter, indicates that neither the value of the tech center nor the value of the plants' land and buildings influenced the decision to continue to make credit available under the facility.

[2] *** ***

Explanation for the Lien on the Land and Buildings

The lien on the plants' land and buildings is important as an incident to the collateral package for the facility because: (1) the mortgage on the land ensures access to the equipment and other personal property to be subjected to a security interest. (2) the land and buildings are necessary for the sale of an operating plant as an entity to a user; (3) the lien on the land and buildings will preclude transfer of the plants to, or seizure of the plants by, another creditor without the bank syndicate's consent; and (4) having the mortgage on the land precludes disputes about whether personal property is or is not a fixture, an area of law which varies from state to state, is uncertain in result, and which lenders take great pains to avoid.

You have suggested that it may have been possible for the bank syndicate to take a security interest in personal property and fixtures, and an easement on the land for purposes of ensuring access. For the bank syndicate to take an easement rather than a mortgage lien would, however, raise a host of legal and practical problems.

First, if the collateral is liquidated and the plants are sold as operating entities, a buyer would seek ownership of the land and buildings to operate a plant without restrictions. If the bank syndicate only had an easement it would not be able to transfer ownership of the land and buildings.

Second, an easement is a present interest in the property subject to the easement. Thus, if the bank syndicate held easements to the plants, it would have held a present interest and would subject itself to a wide variety of potential private and governmental liabilities for the use and operation of the plants. Of particular concern would be liability for environmental claims. The bank syndicate is insulated from this exposure if it merely holds a security interest in the plants.

A third problem with the use of an easement is uncertainty that the bank syndicate can validly take "easements" that will provide all the rights needed by a secured lender. Typically, easements are granted in perpetuity for very limited purposes (usually a right to use or take something from the burdened property) and are frequently viewed as personal to the grantee. It is unusual for easements to contain significant obligations on the part of the grantor of the easement (i.e., the company). The bank syndicate's interest, however, will be of the limited duration — ceasing to exist when the facility is repaid, will be for fairly broad purposes, and will need to be transferable to successive parties should foreclosure on the plants be required. Moreover, to ensure that the plant assets are preserved, the bank

[illegible] interest in the land will need to be protected by [illegible] covenants in the loan documentation such as requirements that the borrower pay taxes and maintain the land. Such covenants are typical of mortgage documents but not of easement instruments. The ultimate document, while entitled an "easement," would contain the substance of a mortgage but would lack the predictability of enforcement and acceptance of a mortgage and, with such unusual documentation, may not be considered a valid easement under the property rights of the states where the property is located.

A related problem is that the "easement," because it is in substance security for debt, may be deemed to be an equitable mortgage under state law. If so, the bank syndicate would ultimately have to follow the legal procedures for foreclosure of a mortgage without having availed itself of all the rights and remedies a mortgagee would have obtained in a typical mortgage.

Finally, the form of "easement" needed to secure the facility, because it would be an unusual arrangement, would require a considerable amount of time to draft and negotiate, thus imposing significant administrative costs on the company and bank syndicate.

For these reasons, a mortgage is greatly preferable to an easement on the land appurtenant to a lien on the equipment of the plants. *** ***

As we have previously informed you, time is of the essence and we request your response to our March 19 letter as soon as possible.

Very truly yours,
Glen D. Kesselhaut
David L. Felsenthal
Simpson Thacher & Bartlett

* * *

Trust Interpretations

259 — June 18, 1991

This is in regard to your letter dated January 23, 1991, to the Chief Counsel of the Office of the Comptroller of the Currency (OCC) commenting on OCC Interpretive Letter 525, which upheld certain trust interpretations that impose restrictions on national banks in investing trust assets in bank-advised mutual funds. Although you have not requested a further interpretation of trust law, we wish to bring to your attention in your capacity [illegible] national banks that certain statements in [illegible] concerning the fiduciary law applicable to national banks in exercising trust powers are inconsistent with the governing trust law and OCC Interpretation 525. Your attention is directed in particular to statements suggesting that investments may be justified by reasoned opinions of counsel.

On page four of your letter, you indicated that a conflict can be found between 1) the fiduciary duty of loyalty which, as reflected in 12 CFR 9.12, bars self-dealing transactions such as investment assets held in trust by a bank in a mutual fund advised by the bank, and 2) the standard of prudence of a fiduciary in investing trust assets, requiring the trustee to choose investments with the care and skill of a reasonably prudent investor. You stated:

> If the best investment alternative for the beneficiary is the purchase of shares of a mutual fund for which the trustee bank or its affiliate acts as investment adviser, the arrangement likely would be permitted under the law of many states . . . .

The argument in your letter appears to be that an investment of a type that would be considered prudent can be made notwithstanding the fact that the investment may represent a breach of the duty of loyalty. Such an argument would be inconsistent with fiduciary law principles as discussed in OCC Interpretation 525 and would eviscerate the duty of loyalty by denying its effect precisely where it is directed — to prevent the fiduciary from acting on an inclination to find a self-dealing transaction to be prudent.

The duty of loyalty barring a self-dealing transaction, however, is separate from the duty of prudent investing. Both fiduciary obligations can easily be observed without necessarily violating one to serve the other. The requirement of prudence can be fulfilled by investing in a range of investments and would not limit a trustee to self-dealing investments. *See* OCC Interpretation 525, 12-13, and W. Fratcher, *Scott on Trusts* (4th ed. 1988) 227 (Investments That a Trustee Can Properly Make).

Moreover, as noted in Interpretation 525, if the bank believes that a self-dealing transaction such as investing trust assets in a bank-advised fund would be the best investment for the customer, the current law provides mechanisms to allow the trustee to provide this investment. There are explicit exceptions in 12 CFR 9.12 allowing self-dealing transactions where lawfully authorized by the instrument creating the trust relationship, a court order, or local law. Thus, the beneficiary may authorize the transaction in the trust instrument if consistent with state law. Alternatively, the trustee may petition the court for an order authorizing the transaction. 12 CFR 9.12. In addition, in several states there are statutes expressly permitting such investments

under specific conditions. *See* OCC Interpretation 525, 12-17.

Also on page four of your letter is a similar argument attempting to find a conflict between the self-dealing prohibition and the fiduciary responsibility to maintain investment discretion and control. Your letter stated:

> Local law in some states might be interpreted to require a trustee bank investing trust assets in a mutual fund to invest only in such funds for which the bank serves as investment adviser. Such a requirement would be consistent with the fiduciary duty of exclusive management which in some states might prohibit a trustee from delegating the management of trust assets to a third party.

This argument appears to confuse the two separate trust duties of (1) maintaining investment discretion and control and (2) avoiding conflicts of interest. Again, both of these duties can easily be observed without necessarily violating one to serve the other. A trustee may maintain investment discretion by choosing investments that do not place the bank in a conflict of interest position. In addition, we reiterate that the restrictions of 12 CFR 9.12 include explicit exceptions allowing a bank to engage in a self-dealing transaction to the extent that the bank can demonstrate lawful authorization by the instrument creating the trust relationship, a court order, or local law.

Banks relying on the above exceptions to section 9.12 should have a valid opinion of counsel that supports such reliance. However, incorrect opinions cannot create compliance with this regulation. A national bank that invests trust assets in shares of investment companies advised by the bank based on invalid arguments contained in a written opinion of counsel will be subject to OCC enforcement proceedings, as well as actions for reimbursement to beneficiaries.

Dean E. Miller
Senior Advisor
for Fiduciary Responsibilities

* * *

260 — May 14, 1991

This is in reply to your letter of April 19, 1991, on behalf of your clients, the *** (funds).

You have requested our concurrence in your opinion that trustee banks which are national banks may pledge securities as collateral for cash held in trust for the funds as described in your letter. As described below, we do concur in that opinion.

Your letter states that the funds are investment companies registered under the Investment Company Act of 1940 which contain over *** investment portfolios with assets of over *** billion. The assets of these funds are held as custodian or subcustodian in various banks. Daily operations of the funds generate as much as *** billion in cash in these custodial accounts. In order efficiently to invest this cash and minimize the risk of loss, a number of money management techniques are used, primarily overnight investments in repurchase agreements secured by U.S. government securities. Even so, the custodian and subcustodian banks may hold overnight significant amounts of cash for the funds pending investment or distribution.

The funds propose to amend their custodian agreements to provide that all or a portion of fund cash awaiting investment or distribution shall be held in trust pursuant to a revocable trust agreement between each fund and the applicable bank. The trust agreement would require the trustee bank to hold the cash in trust for the purpose of safekeeping pending distribution or investment. The trust agreement would provide that the trustee bank might in its discretion deposit the cash in one or more deposit accounts in the commercial or other departments of the trustee bank. In addition, the trustee bank would be given discretion to deposit the cash so held in trust in other banks, provided any such deposits would be fully insured by the FDIC.

The trust agreement would also provide that any deposits so held in trust which are in excess of FDIC insurance would be collateralized in accordance with 12 CFR 9.10(b). The trustee bank would have full discretion to select collateral within the parameters of that regulation. The trust agreement would also provide that cash could be so held no longer than necessary to permit its investment or distribution.

The proposal contemplates that the trust agreement would create a valid trust under the law of the state in which the trustee bank is located, and each trustee bank would obtain an opinion of counsel confirming the validity of the trust agreement under the law of that state.

We have examined the proposed arrangement and your analysis of the applicable legal principles. It is our opinion that if a valid trust is created under the laws of the state in which the trustee bank is located, the provisions of 12 U.S.C. 92a and 12 CFR 9.10(b) would require that the bank pledge securities which qualify under the aforecited statute and regulation for deposits of funds of these trusts which are awaiting investment

[illegible] to the extent that such deposits are in [illegible] FDIC [illegible]

[illegible] E. Mi[illegible]
Senior Advisor
for Community Responsibilities

* * *

Investment Securities Letters

49 — July 25, 1991

This is in response to your May 8, 1991, letter in which you request clarification of agency fee disclosure requirements for commercial paper. This letter rescinds the May 22, 1991, letter I sent you regarding this same topic.

You state you have noted that some bank dealers do not disclose agent fees for commercial paper sales to customers, and that they base their practice on provisions in 12 CFR 12. You ask for clarification of 12 CFR 12 fee disclosure requirements, and whether 12 CFR 12 is contradicted or superceded by Securities and Exchange Commission (SEC) regulation 240.10b-10 or Municipal Securities Rulemaking Board (MSRB) rule G-15.

Twelve CFR 1 permits national banks (banks) to underwrite or deal in certain debt securities. The regulation limits underwriting and dealing activities to securities defined as type I and II securities, which include general obligation municipal bonds and bonds backed by the full faith and credit of the U.S. government. All other securities sold by banks to customers must be sold in an as agent capacity.

Twelve CFR 12.2(e) defines the term "securities;" and excludes from the definition "any note, draft, bill of exchange, or bankers acceptance which has a maturity at the time of issuance of not exceeding nine months." Although commercial paper may not be included in the definition of security in 12 CFR 12, several court cases have defined commercial paper sold to customers for investment purposes as a security, regardless of its maturity. An obligation issued by third-party issuers for sale to the investing public which is subject to credit quality opinions of the various credit rating services, and which is often not backed by a letter of credit, is a form of commercial paper that is considered to be a security.

Agency law sets forth a number of factors which must be considered in determining whether or not a national bank is acting in an agency capacity and whether the bank is fulfilling its responsibilities as an agent to another party. For a securities transaction to be considered a true agency transaction, disclosures to the investor must address all relevant facts and circumstances, including disclosure of the agency remuneration. Banks must act in an agent capacity in commercial paper sales to investing customers, and disclose their remuneration associated with the transaction.

MSRB rule G-15 requires agency fee disclosure to investor customers for municipal securities. However, the MSRB rules apply only to municipal securities. SEC regulation 240.10b-10 does not exclude all types of commercial paper from remuneration disclosure requirements. Only commercial loan transactions and notes are exempted from the definition of security. Thus, we do not believe that the MSRB and SEC rules contradict the remuneration disclosure requirements for commercial paper.

John Kerr
National Bank Examiner
Compliance Management Department

* * *

Mergers — July 1 to September 30, 1991

Mergers consummated involving two or more operating banks.

Page

Colorado

August 1, 1991
- Mesa National Bank, Grand Junction, Colorado, and
- Mesa National Bank-Montrose, Montrose, Colorado, and
- Mesa National Bank-Rifle, Rifle, Colorado, and
- Mesa National Bank-Glenwood Springs, Gleenwood Springs, Colorado, and
- Mesa National Bank-Clifton, Grand Junction, Colorado
- Merger 85

Connecticut

July 14, 1991
- Fleet Bank, National Association, Hartford, Connecticut, and
- New Connecticut Bank & Trust Company, National Association, Hartford, Connecticut
- Merger 85

Florida

September 19, 1991
- First Union National Bank of Florida, Jacksonville, Florida, and
- Southeast Bank of West Florida, Pensacola, Florida, and
- Southeast Bank, National Association, Miami, Florida
- Merger 85

Illinois

July 19, 1991
- The First National Bank of Decatur, Decatur, Illinois, and
- First National Bank of Mt. Zion, Mt. Zion, Illinois
- Merger 85

July 31, 1991
- American National Bank and Trust Company of Chicago, Chicago, Illinois, and
- American National Bank of Lisle, Lisle, Illinois
- Merger 85

September 6, 1991
- The American National Bank of Dekalb County, Dekalb County, Illinois, and
- Farmers and Merchants Bank, Sycamore, Illinois
- Merger 86

September 14, 1991
- First National Bank of Evergreen Park, Evergreen Park, Illinois, and
- Clearing Bank, Chicago, Illinois, and
- Oak Lawn National Bank, Oak Lawn, Illinois
- Merger 86

Indiana

September 1, 1991
- Bank One, Indianapolis, National Association, Indianapolis, Indiana, and
- Bank One, Franklin, Franklin, Indiana
- Merger 86

Iowa

July 31, 1991
- Brenton National Bank of Des Moines, Des Moines, Iowa, and
- Brenton Bank and Trust Company, Urbandale, Iowa
- Merger 86

Kansas

July 29, 1991
- The First National Bank of Winfield, Winfield, Kansas, and
- The Oxford Bank, Oxford, Kansas
- Merger 86

September 1, 1991
- The First National Bank of Medicine Lodge, Medicine Lodge, Kansas, and
- The Isabel State Bank, Isabel, Kansas
- Merger 86

September 30, 1991
- Emprise Bank, National Association, Hillsboro, Kansas, and
- Emprise Bank, National Association, Council Grove, Kansas
- Merger 87

Kentucky

August 16, 1991
- The Fifth Third Bank of Central Kentucky, National Association, Paris, Kentucky, and
- Farmers Exchange Bank, Millersburg, Kentucky
- Merger 87

September 13, 1991
- Liberty National Bank of Lexington, Lexington, Kentucky, and
- Liberty National Bank of Jessamine, Nicholasville, Kentucky
- Merger 87

Louisiana

July 19, 1991
- First National Bank of Commerce, New Orleans, Louisiana, and
- Pontchartrain State Bank, Metairie, Louisiana
- Merger 87

August 23, 1991
- Parish National Bank, Bogalusa, Louisiana, and
- Parish National Bank of St. Tammany, Slidell, Louisiana
- Merger 87

Massachusetts

July 14, 1991
- Fleet National Bank of Boston, Boston, Massachusetts, and
- New Bank of New England, National Association, Boston, Massachusetts
- Merger 87

Minnesota

July 1, 1991
- Firstar Shelard Bank, National Association, St. Louis Park, Minnesota, and
- Firstar Hugo Bank, Hugo, Minnesota, and
- Firstar Metrobank, Bloomington, Minnesota, and
- Firstar Centennial Bank, Circle Pines, Minnesota, and
- Firstar Eagan Bank, National Association, Eagan, Minnesota, and
- Firstar New Brighton Bank, New Brighton, Minnesota, and
- Firstar Roseville Bank, Roseville, Minnesota, and
- Firstar St. Anthony Bank, National Association, St. Anthony, Minnesota and
- First Western Bank, National Association, St. Louis Park, Minnesota, and
- Firstar Stillwater Bank, National Association, Stillwater, Minnesota
- Merger 88

August 31, 1991
- Marquette Bank Minneapolis, National Association, Minneapolis, Minnesota, and
- Marquette Bank Apple Valley, Apple Valley, Minnesota
- Merger [illegible]

September [illegible] 1991
[illegible] National Association, Morristown, [illegible]
[illegible] Merger [illegible]
September [illegible] 1991
[illegible] National Association, New Jersey, Newark, New Jersey, and
[illegible] Bank, Morristown, New Jersey
Merger 88

New York

July 26, 1991
Key Bank of Eastern New York, National Association, Albany, New York, and
Key Bank of Western New York, National Association, Buffalo, New York, and
Key Bank of Central New York, National Association, Syracuse, New York
Merger 88

Ohio

July 1, 1991
The Village National Bank of Upper Sandusky, Wharton, Ohio, and
The First Citizens National Bank of Upper Sandusky, Upper Sandusky, Ohio
Merger 89
August 1, 1991
Columbus National Bank, Quaker City, Ohio, and
Citizens National Bank Flushing-St. Clairsville, St. Clairsville, Ohio
Merger 89
August 30, 1991
Star Bank, National Association, Cincinnati, Cincinnati, Ohio, and
Star Bank, National Association, Butler County, Hamilton, Ohio, and
Star Bank, National Association, Dayton, Fairborn, Ohio
Merger 90
September 13, 1991
Bank One, Cleveland, National Association, Cleveland, Ohio, and
The Central Trust Company of Northern Ohio, National Association, Lorain, Ohio
Merger 90
Bank One, Columbus, National Association, Columbus, Ohio, and
The Central Trust Company, Newark, Ohio
Merger 90
Bank One, Akron, National Association, Akron, Ohio, and
The Central Trust Company of Northeastern Ohio, National Association, Canton, Ohio, and
Bank One, Wooster, National Association, Wooster, Ohio
Merger 90

Oklahoma

August [illegible] 1991
[illegible] National Bank & Trust Company of Enid, Enid, Oklahoma, and
[illegible] Bank and Trust Company of Blackwell, Blackwell, Oklahoma
Merger [illegible]
September [illegible] 1991
[illegible] Bank and Trust Company of [illegible], [illegible], and
[illegible]
Merger 90

Tennessee

July 19, 1991
Third National Bank in Nashville, Nashville, Tennessee, and
Mid-South Bank & Trust Company, Murfreesboro, Tennessee
Merger 91
September 1, 1991
First Tennessee Bank, National Association, Memphis, Tennessee, and
Valley Fidelity Bank and Trust Company, Knoxville, Tennessee
Merger 91

Texas

July 29, 1991
Montwood National Bank, El Paso, Texas, and
The Valley Bank of El Paso, El Paso, Texas
Merger 92
August 19, 1991
Liberty National Bank, Austin, Texas, and
The Capital National Bank in Austin, Austin, Texas
Merger 92
August 22, 1991
The East Texas National Bank of Palestine, Palestine, Texas, and
First Mexia Bank, Mexia, Texas
Merger 92
August 31, 1991
U.S. Trust Company of Texas, National Association, Dallas, Texas, and
U.S. Trust Company of Texas, Dallas, Texas
Merger 92

West Virginia

August 30, 1991
Beckley National Bank, Beckley, West Virginia, and
The Merchants & Miners National Bank of Oak Hill, Oak Hill, West Virginia and
Cardinal State Bank, National Association, Beckley, West Virginia
Merger 92

Wisconsin

July 1, 1991
First Wisconsin National Bank of Milwaukee, Milwaukee, Wisconsin, and
First Wisconsin Bank of Waukesha, Waukesha, Wisconsin
Merger 92
August 1, 1991
First Wisconsin National Bank of Milwaukee, Milwaukee, Wisconsin, and
First Wisconsin National Bank of Brookfield, Brookfield, Wisconsin
Merger 93

Wyoming

July 1, 1991
First Interstate Bank of Casper, National Association, Casper, Wyoming, and
First Interstate Bank of Laramie, National Association, Laramie, Wisconsin, and
First Interstate Bank of Riverton, National Association, Riverton, Wisconsin
Merger 93

Mergers consummated involving national banks and savings and loan associations.

Page

Arkansas

July 26, 1991
Simmons First National Bank, Pine Bluff, Arkansas, and
First Savings of Arkansas, Federal Association, Little Rock, Arkansas
Merger ... 93
Metropolitan National Bank, Little Rock, Arkansas, and
First Savings of Arkansas, Federal Association, Little Rock, Arkansas
Merger ... 93
Worthen National Bank of Arkansas, Little Rock, Arkansas, and
First Savings of Arkansas, Federal Association, Little Rock, Arkansas
Merger ... 93
Worthen National Bank of Hot Springs, Hot Springs, Arkansas, and
First Savings of Arkansas, Federal Association, Little Rock, Arkansas
Merger ... 93
First Commercial Bank, National Association, Little Rock, Arkansas, and
First Savings of Arkansas, Federal Association, Little Rock, Arkansas
Merger ... 94
First National Bank in Green Forest, Green Forest, Arkansas, and
First Savings of Arkansas, Federal Association, Little Rock, Arkansas
Merger ... 94
Union National Bank of Arkansas, Little Rock, Arkansas, and
First Savings of Arkansas, Little Rock, Arkansas
Merger ... 94

August 30, 1991
The Citizens National Bank of Hope, Hope, Arkansas, and
Texarkana Federal Savings and Loan Association, Federal Association, Texarkana, Arkansas
Merger ... 94

September 20, 1991
Simmons First National Bank, Pine Bluff, Arkansas, and
Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas
Merger ... 94
One National Bank, Little Rock, Arkansas, and
Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas
Merger ... 94
Union National Bank of Arkansas, Little Rock, Arkansas, and
Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas
Merger ... 95
First Commercial Bank, National Association, Little Rock, Arkansas, and
Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas
Merger ... 95
The First National Bank of Conway, Conway, Arkansas, and
Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas
Merger ... 95

California

July 19 1991
Queen City Bank, National Association, Long Beach, California, and
Beach Savings Bank, F S B , Fountain Valley, California
Merger ... 95

August 9 1991
Bank of America National Trust and Savings Association, San Francisco, California, and
Santa Barbara Federal Savings and Loan Association, Santa Barbara, California
Merger ... 95

Colorado

July 12, 1991
Central Bank Denver National Association, Denver Colorado and
Capitol Federal Savings & Loan Association, Aurora Colorado
Merger ... 95

August 16, 1991
The First National Bank of Meeker, Meeker Colorado, and
Great West, A Federal Savings Bank, Craig, Colorado
Merger ... 96

August 23, 1991
First National Bank in Lamar, Lamar Colorado, and
Heritage Federal Savings Association Lamar, Colorado
Merger ... 96

Connecticut

August 9, 1991
The Chase Manhattan Bank of Connecticut National Association, Bridgeport, Connecticut, and
Citytrust Bridgeport, Connecticut, and
Mechanics and Farmers Savings Bank, F S B., Bridgeport, Connecticut
Merger ... 96

Florida

July 12, 1991
Central Bank of the South, National Association, Pensacola, Florida, and
Citizens & Builders Federal Savings Bank, Pensacola, Florida
Merger ... 96

July 19, 1991
Republic National Bank of Miami, Miami, Florida, and
Ensign Federal Savings Bank, New York, New York
Merger ... 96

August 2, 1991
First Union National Bank of Florida, Jacksonville, Florida, and
Florida Federal Savings, F S B , St Petersburg, Florida
Merger ... 96

August 16, 1991
Southtrust Bank of Jacksonville, National Association, Jacksonville, Florida, and
Duval Federal Savings Association, Jacksonville, Florida
Merger ... 97

August 23, 1991
First Union National Bank of Florida, Jacksonville, Florida and
Gold Coast Federal Savings, F S B , Plantation, Florida
Merger ... 97

September 20, 1991
First National Bank and Trust Company of the Treasure Coast Stuart, Florida, and
American Pioneer Federal Savings Bank Orlando Florida
Merger ... 97
First Union National Bank of Florida Jacksonville Florida and
American Pioneer Federal Savings Bank Orlando Florida
Merger ... 97
Riverside National Bank of Florida, Fort Pierce Florida and
First Citizens Savings and Loan Association Fort Pierce Florida
Merger ... 97

Georgia

July 26 1991
Georgia National Bank Athens Georgia and
Fulton Federal Savings and Loan Association [illegible]
Merger ... [illegible]

[illegible]
[illegible]
Merger [illegible]

Illinois

[illegible] 1991
[illegible] National Association, Alton, Illinois, and
[illegible] Federal Savings Bank, Alton, Illinois
Merger 98

September 27, 1991
The First National Bank of Chicago, Chicago, Illinois, and
[illegible] Savings Association of America, Chicago, Illinois
Merger 98

Iowa

September 27, 1991
[illegible] National Bank, Audubon, Iowa, and
Home Federal Savings & Loan Association of Harlan, Harlan, Iowa
Merger 98

Kentucky

August 30, 1991
Trans Financial Bank, National Association, Bowling Green, Kentucky, and
Future Federal Savings Bank, Louisville, Kentucky
Merger 98

Mississippi

July 12, 1991
Trustmark National Bank, Jackson, Mississippi, and
Jackson Federal Savings Bank, Jackson, Mississippi
Merger 98

July 26, 1991
The Citizens National Bank of Meridan, Meridan, Mississippi, and
Charter Savings Bank, F.S.B., Hattiesburg, Mississippi
Merger 98

Missouri

July 26, 1991
Mercantile Bank of St. Louis, National Association, Clayton, Missouri, and
Germania Bank, A Federal Savings Bank, Alton, Missouri
Merger 98

New Jersey

July 19, 1991
First Fidelity Bank, National Association, New Jersey, Newark, New Jersey, and
[illegible] Federal Savings Bank, New York, New York
Merger 99

August 23, 1991
New Jersey National Bank, Ewing Township, New Jersey, and
[illegible] Borough Federal Savings, Trenton, New Jersey
Merger 99

September 13, 1991
[illegible] National Bank, Plainfield, New Jersey, and
[illegible] F.S.A., South Plainfield, New Jersey
Merger 99

North Carolina

[illegible]
[illegible]
Merger 99

September [illegible], 1991
[illegible] National Bank of North Carolina, [illegible], North Carolina, and
Preferred Savings Bank, F.S.B., High Point, North Carolina
Merger 99

Ohio

July 19, 1991
The United National Bank & Trust Company, Canton, Ohio, and
First Savings and Loan Company, F.A., Canton, Ohio
Merger 99
The Wayne County National Bank of Wooster, Wooster, Ohio, and
First Savings and Loan of Massillon, F.A., Wooster, Ohio
Merger 100

August 9, 1991
Bank One, Cleveland, National Association, Cleveland, Ohio, and
Freedom Savings Association, F.A., Columbus, Ohio
Merger 100

August 23, 1991
Bank One, Dayton, National Association, Dayton, Ohio, and
Merchants and Mechanics Federal Savings and Loan Association, Springfield, Ohio
Merger 100

Oklahoma

August 9, 1991
Bank of Oklahoma, National Association, Tulsa, Oklahoma, and
Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma
Merger 100
The First National Bank and Trust Company of Tulsa, Tulsa, Oklahoma, and
Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma
Merger 100
The Stillwater National Bank and Trust Company, Stillwater, Oklahoma, and
Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma
Merger 100
The Liberty National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma, and
Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma
Merger 100

August 16, 1991
State Bank, National Association, Tulsa, Oklahoma, and
State Federal Savings Association, Tulsa, Oklahoma
Merger 101

Texas

July 12, 1991
Bank of America Texas, National Association, Houston, Texas, and
Commerce Federal Savings Association, San Antonio, Texas
Merger 101

July 19, 1991
Bank One, Texas, National Association, Dallas, Texas, and
Commerce Federal Savings Association, Conroe, Texas
Merger 101
Commercial National Bank in Nacogdoches, Nacogdoches, Texas, and
Superior Federal Savings Bank, Nacogdoches, Texas
Merger 101
Bayshore National Bank of La Porte, La Porte, Texas, and
Liberty County Federal Savings Association, Liberty, Texas
Merger [illegible]

[illegible]
[illegible]
[illegible]
Merger [illegible]

Page

August 16, 1991
Amarillo National Bank, Amarillo, Texas, and
Citizens Security Bank, Federal Association, Borger, Texas
Merger 101

September 20, 1991
Bayshore National Bank of La Porte, La Porte, Texas, and
Bayshore Federal Savings Association, La Porte, Texas
Merger 102

Washington

July 19, 1991
Puget Sound National Bank, Tacoma, Washington, and
Family Savings and Loan Association, F.A., Seattle, Washington
Merger 102

Page

Wyoming

July 26, 1991
The Rawlins National Bank, Rawlins, Wyoming, and
Westland Federal Savings & Loan Association, Rawlins,
Wyoming
Merger . . . . [illegible]

A number of transactions in this section do not have an accompanying decision. In those cases, the OCC reviewed the competitive effects of the proposals by using its standard procedures for determining whether the transaction has minimal or no adverse competitive effects. The OCC found the proposals satisfied its criteria for transactions that clearly had no or minimal adverse competitive effects

MESA NATIONAL BANK,
Grand Junction, Colorado, and Mesa National Bank-Montrose, Montrose, Colorado, and Mesa National Bank-Rifle, Rifle, Colorado, and Mesa National Bank-Glenwood Springs, Glenwood Springs, Colorado, and Mesa National Bank-Clifton, Grand Junction, Colorado, and Mesa National Bank-Patterson, Grand Junction, Colorado

Names of institutions and type of transaction	*Total assets*
Mesa National Bank, Grand Junction, Colorado (22182), with	$67,639,000
and Mesa National Bank-Montrose, Montrose, Colorado (22191), with	6,490,000
and Mesa National Bank-Rifle, Rifle, Colorado (22193), with	14,147,000
and Mesa National Bank-Glenwood Springs, Gleenwood Springs, Colorado (22190), with	5,509,000
and Mesa National Bank-Clifton, Grand Junction, Colorado (22189), with	11,707,000
and Mesa National Bank-Patterson, Grand Junction, Colorado (22192), with	9,139,000
merged August 1, 1991, under charter 22182 and title "Mesa National Bank." The merged bank at date of merger had	114,631,000

* * *

FLEET BANK, NATIONAL ASSOCIATION,
Hartford, Connecticut, and New Connecticut Bank & Trust Company, National Association, Hartford, Connecticut

Names of institutions and type of transaction	*Total assets*
Fleet Bank, National Association, Hartford, Connecticut (22435), with	$2,332,000,000
and New Connecticut Bank & Trust Company, National Association, Harftord, Connecticut (22174), with	7,192,000,000
merged July 14, 1991, under charter and title of the former. The merged bank at date of merger had	9,524,000,000

* * *

FIRST UNION NATIONAL BANK OF FLORIDA,
Jacksonville, Florida, and Southeast Bank of West Florida, Pensacola, Florida, and Southeast Bank, National Association, Miami, Florida

Names of institutions and type of transaction	*Total assets*
First Union National Bank of Florida, Jacksonville, Florida (17695), with	$16,800,848,000
and Southeast Bank of West Florida, Pensacola, Florida, with	—
and Southeast Bank, National Association, Miami, Florida (15638), with	—
merged September 19, 1991, under charter 17695 and title "First Union National Bank of Florida." The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF DECATUR,
Decatur, Illinois, and First National Bank of Mt. Zion, Mt. Zion, Illinois

Names of institutions and type of transaction	*Total assets*
The First National Bank of Decatur, Decatur, Illinois (4920), with	$242,796,000
and First National Bank of Mt. Zion, Mt. Zion, Illinois (16448), with	8,692,000
merged July 19, 1991, under charter and title of the former.The merged bank at date of merger had	251,488,000

* * *

AMERICAN NATIONAL BANK AND TRUST COMPANY OF CHICAGO,
Chicago, Illinois, and American National Bank of Lisle, Lisle, Illinois

Names of institutions and type of transaction	*Total assets*
American National Bank and Trust Company of Chicago, Chicago, Illinois (13216), with	$4,769,348,000
and American National Bank of Lisle, Lisle, Illinois (14930), with	25,783,000
merged July 31, 1991, under charter and title of the former.The merged bank at date of merger had	4,795,131,000

* * *

THE AMERICAN NATIONAL BANK OF DEKALB COUNTY,
Dekalb County, Illinois, and Farmers and Merchants Bank, Sycamore, Illinois

Names of institutions and type of transaction	*Total assets*
The American National Bank of Dekalb County, Dekalb, Illinois (16199), with	$40,190,000
and Farmers and Merchants Bank, Sycamore, Illinois, with	45,443,000
merged September 6, 1991, under charter and title of the former. The merged bank at date of merger had	89,847,000

. . .

FIRST NATIONAL BANK OF EVERGREEN PARK,
Evergreen Park, Illinois, and Clearing Bank, Chicago, Illinois, and Oak Lawn National Bank, Oak Lawn, Illinois

Names of institutions and type of transaction	*Total assets*
First National Bank of Evergreen Park, Evergreen Park, Illinois (14618), with	$815,040,000
and Clearing Bank, Chicago, Illinois, with	137,245,000
and Oak Lawn National Bank, Oak Lawn, Illinois (17747), with	288,434,000
merged September 14, 1991, under charter 14618 and title "First National Bank of Evergreen Park." The merged bank at date of merger had	1,240,720,000

. . .

BANK ONE, INDIANAPOLIS, NATIONAL ASSOCIATION,
Indianapolis, Indiana, and Bank One, Franklin, Franklin, Indiana

Names of institutions and type of transaction	*Total assets*
Bank One, Indianapolis, National Association, Indianapolis, Indiana (13759), with	$4,168,570,000
and Bank One, Franklin, Franklin, Indiana, with	89,069,000
merged September 1, 1991, under charter and title of the former. The merged bank at date of merger had	4,254,451,000

. . .

BRENTON NATIONAL BANK OF DES MOINES,
Des Moines, Iowa, and Brenton Bank and Trust Company, Urbandale, Iowa

Names of institutions and type of transaction	*Total assets*
Brenton National Bank of Des Moines, Des Moines, Iowa (14746), with	$226,270,000
and Brenton Bank and Trust Company, Urbandale, Iowa, with	53,341,000
merged July 31, 1991 under charter and title of the former. The merged bank at date of merger had	279,536,000

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THE FIRST NATIONAL BANK OF WINFIELD,
Winfield, Kansas, and The Oxford Bank, Oxford, Kansas

Names of institutions and type of transaction	*Total assets*
The First National Bank of Winfield, Winfield, Kansas (3218), with	$86,645,000
and The Oxford Bank, Oxford, Kansas, with	8,770,000
merged July 29, 1991, under charter and title of the former. The merged bank at date of merger had	95,414,000

. . .

THE FIRST NATIONAL BANK OF MEDICINE LODGE,
Medicine Lodge, Kansas, and The Isabel State Bank, Isabel, Kansas

Names of institutions and type of transaction	*Total assets*
The First National Bank of Medicine Lodge, Medicine Lodge, Kansas (10575), with	$63,139,000
and The Isabel State Bank, Isabel, Kansas, with	7,002,000
merged September 1, 1991, under charter and title of the former. The merged bank at date of merger had	70,141,000

. . .

EMPRISE BANK, NATIONAL ASSOCIATION,
Hillsboro, Kansas, and Emprise Bank, National Association, Council Grove, Kansas

Names of institutions and type of transaction	Total assets
Emprise Bank, National Association, Hillsboro, Kansas (6120), with	$35,607,000
and Emprise Bank, National Association, Council Grove, Kansas (5757), with	15,231,000
merged September 30, 1991, under charter and title of the former. The merged bank at date of merger had	50,838,000

* * *

THE FIFTH THIRD BANK OF CENTRAL KENTUCKY, NATIONAL ASSOCIATION,
Paris, Kentucky, and Farmers Exchange Bank, Millersburg, Kentucky

Names of institutions and type of transaction	Total assets
The Fifth Third Bank of Central Kentucky, National Association, Paris, Kentucky (14076), with	$53,320,000
and Farmers Exchange Bank, Millersburg, Kentucky, with	23,838,000
merged August 16, 1991, under charter and title of the former. The merged bank at date of merger had	78,570,000

* * *

LIBERTY NATIONAL BANK OF LEXINGTON,
Lexington, Kentucky, and Liberty National Bank of Jessamine, Nicholasville, Kentucky

Names of institutions and type of transaction	Total assets
Liberty National Bank of Lexington, Lexington, Kentucky (18786), with	$202,526,000
and Liberty National Bank of Jessamine, Nicholasville, Kentucky (21910), with	28,430,000
merged September 13, 1991, under charter and title of the former. The merged bank at date of merger had	230,956,000

* * *

FIRST NATIONAL BANK OF COMMERCE,
New Orleans, Louisiana, and Pontchartrain State Bank, Metairie, Louisiana

Names of institutions and type of transaction	Total assets
First National Bank of Commerce, New Orleans, Louisiana (13689), with	$2,803,781,000
and Pontchartrain State Bank, Metairie, Louisiana, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

PARISH NATIONAL BANK,
Bogalusa, Louisiana, and Parish National Bank of St. Tammany, Slidell, Louisiana

Names of institutions and type of transaction	Total assets
Parish National Bank, Bogalusa, Louisiana (15642), with	$85,378,000
and Parish National Bank of St. Tammany, Slidell, Louisiana (20849), with	60,708,000
merged August 23, 1991, under charter and title of the former. The merged bank at date of merger had	147,826,000

* * *

FLEET NATIONAL BANK OF BOSTON,
Boston, Massachusetts, and New Bank of New England, National Association, Boston, Massachusetts

Names of institutions and type of transaction	Total assets
Fleet National Bank of Boston, Boston, Massachusetts (18677), with	$5,300,000
and New Bank of New England, National Association, Boston, Massachusetts (22173), with	11,437,000,000
merged July 14, 1991, under charter and title of the former. The merged bank at date of merger had	11,442,000,000

* * *

FIRSTAR SHELARD BANK, NATIONAL ASSOCIATION,
St. Louis Park, Minnesota, and Firstar Hugo Bank, Hugo, Minnesota, and Firstar Metrobank, Bloomington, Minnesota, and Firstar Centennial Bank, Circle Pines, Minnesota, and Firstar Eagan Bank, National Association, Eagan, Minnesota, and Firstar New Brighton Bank, New Brighton, Minnesota, and Firstar Roseville Bank, Roseville, Minnesota, and Firstar St. Anthony Bank, National Association, St. Anthony, Minnesota, and First Western Bank, St. Louis Park, Minnesota, and Firstar Stillwater Bank, National Association, Stillwater, Minnesota

Names of institutions and type of transaction	*Total assets*
Firstar Shelard Bank, National Association, St. Louis Park, Missouri (16128), with	$154,282,000
and Firstar Hugo Bank, Hugo, Minnesota, with	46,408,000
and Firstar Metrobank, Bloomington, Minnesota, with	161,219,000
and Firstar Centennial Bank, Circle Pines, Minnesota, with	28,645,000
and Firstar Eagan Bank, National Association, Eagan, Minnesota (15223), with	57,180,000
and Firstar New Brighton Bank, New Brighton, Minnesota, with	90,722,000
and Firstar Roseville Bank, Roseville, Minnesota, with	141,807,000
and Firstar St. Anthony Bank, National Association, St. Anthony, Minnesota (16702), with	97,401,000
and First Western Bank, St. Louis Park, Minnesota, with	146,510,000
and Firstar Stillwater Bank, National Association, Stillwater, Minnesota (1514), with	117,644,000
merged July 1, 1991, under charter 16128 and title "Firstar Bank of Minnesota, National Association." The merged bank at date of merger had	1,051,920,000

* * *

MARQUETTE BANK MINNEAPOLIS, NATIONAL ASSOCIATION,
Minneapolis, Minnesota, and Marquette Bank Apple Valley, Apple Valley, Minnesota

Names of institutions and type of transaction	*Total assets*
Marquette Bank Minneapolis, National Association, Minneapolis, Minnesota (11861), with	$2,218,623,000
and Marquette Bank Apple Valley, Apple Valley, Minnesota, with	50,295,000
merged August 31, 1991, under charter and title of the former. The merged bank at date of merger had	2,268,918,000

* * *

NORWEST BANK MINNESOTA, NATIONAL ASSOCIATION,
Minneapolis, Minnesota, and First National Bank in Anoka, Anoka, Minnesota

Names of institutions and type of transaction	*Total assets*
Norwest Bank Minnesota, National Association, Minneapolis, Minnesota (2006), with	$10,570,075,000
and First National Bank in Anoka, Anoka, Minnesota (13547), with	222,739,000
merged September 23, 1991, under charter and title of the former. The merged bank at date of merger had	10,792,814,000

* * *

FIRST FIDELITY BANK, NATIONAL ASSOCIATION, NEW JERSEY,
Newark, New Jersey, and Morris Savings Bank, Morristown, New Jersey

Names of institutions and type of transaction	*Total assets*
First Fidelity Bank, National Association, New Jersey, Newark, New Jersey (1452), with	$12,791,000
and Morris Savings Bank, Morristown, New Jersey, with	1,028,000
merged September 27, 1991, under charter and title of the former. The merged bank at date of merger had	13,823,000

* * *

KEY BANK OF EASTERN NEW YORK, NATIONAL ASSOCIATION,
Albany, New York, and Key Bank of Western New York, National Association, Buffalo, New York, and Key Bank of Central New York, National Association, Syracuse, New York

Names of institutions and type of transaction	*Total assets*
Key Bank of Eastern New York, National Association, Albany, New York (1301), with	$4,721,760,000
and Key Bank of Western New York, National Association, Buffalo, New York (4988), with	2,730,682,000
and Key Bank of Central New York, National Association, Syracuse, New York (18756), with	2,702,727,000
merged July 26, 1991, under charter 1301 and title "Key Bank of New York, National Association." The merged bank at date of merger had	10,153,879,000

* * *

THE VILLAGE NATIONAL BANK OF UPPER SANDUSKY, Wharton, Ohio, and The First Citizens National Bank of Upper Sandusky, Upper Sandusky, Ohio

Names of institutions and type of transaction	*Total assets*
The Village National Bank of Upper Sandusky, Wharton, Ohio (18783), with	$15 895 000
and The First Citizens National Bank of Upper Sandusky, Upper Sandusky, Ohio (90), with	100 250 000
merged July 1, 1991, under charter 18783 and title "The First Citizens National Bank of Upper Sandusky." The merged bank at date of merger had	117,049,000

* * *

COMPTROLLER'S DECISION

On January 16, 1991, application was made to the Office of the Comptroller of the Currency (OCC) for prior authorization to consolidate The Village National Bank, Wharton, Ohio (formerly, The Village Bank, hereinafter, Village National) with The First Citizens National Bank of Upper Sandusky, Upper Sandusky, Ohio (First Citizens). This application is based on an agreement entered into by the proponents on October 9, 1990.

As of September 30, 1990, First Citizens held total deposits of $91 million and operated two branch offices. As of the same date, Village National held total deposits of $15 million and operated one branch office. Simultaneous with the consolidation, The Village Bank is to convert to a national banking association with the title of "The Village National Bank."

The relevant geographic market for this proposal is the area including and immediately surrounding the communities of Wharton and Dunkirk. This is the area where Village National, the target bank, operates its two offices and derives the bulk of its deposits. This is a rural area with a population of approximately 4,000. In light of the small population, the OCC considers such a small geographic and demographic area to be de minimis from a competitive standpoint. (See Decision of the Comptroller on the application to merge The National Bank and Trust Company of Norwich, Norwich, New York, with National Bank of Oxford, Oxford, New York, dated April 8, 1983).

Further, First Citizens does not operate in the same market, but an adjacent market to the east. While the primary service areas of the two banks are contiguous, the proponents derive only a nominal amount of deposits from the other bank's service area. Therefore, consummation of the proposed transaction will merely replace one competitor in the market with another, which should not have any significantly adverse effects on competition.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions, and the convenience and needs of the communities to be served." Village National and First Citizens have the financial and managerial resources to consummate the transaction without adversely affecting the overall condition of the resulting bank. The future prospects for the resulting bank are favorable, as are the effects of the proposal on the convenience and needs of the general public to be served.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

We have analyzed this proposal pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) and find that it will not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved subject to conditions communicated to the proponents in a separate correspondence.

April 27, 1991

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

* * *

COLUMBUS NATIONAL BANK, Quaker City, Ohio, and Citizens National Bank Flushing-St. Clairsville, St. Clairsville, Ohio

Names of institutions and type of transaction	*Total assets*
Columbus National Bank, Quaker City, Ohio (1989), with	$40 321 000
and Citizens National Bank Flushing-St. Clairsville, St. Clairsville, Ohio (14694), with	60 389 000
merged August 1, 1991, under charter and title of the former. The merged bank at date of merger had	100 710 000

* * *

STAR BANK, NATIONAL ASSOCIATION, CINCINNATI,
Cincinnati, Ohio, and Star Bank, National Association, Butler County, Hamilton, Ohio, and Star Bank, National Association, Dayton, Fairborn, Ohio

Names of institutions and type of transaction	*Total assets*
Star Bank, National Association, Cincinnati, Cincinnati, Ohio (24), with	$3,115,725,000
and Star Bank, National Association, Butler County, Hamilton, Ohio (17200), with	293,976,000
and Star Bank, National Association, Dayton, Fairborn, Ohio (9675), with	340,667,000
merged August 30, 1991, under charter 24 and title "Star Bank, National Association." The merged bank at date of merger had	3,724,323,000

. . .

BANK ONE, CLEVELAND, NATIONAL ASSOCIATION,
Cleveland, Ohio, and The Central Trust Company of Northern Ohio, National Association, Lorain, Ohio

Names of institutions and type of transaction	*Total assets*
Bank One, Cleveland, National Association, Cleveland, Ohio (14686), with	$1,922,545,000
and The Central Trust Company of Northern Ohio, National Association, Lorain, Ohio (15456), with	322,969,000
merged September 13, 1991, under charter and title of the former. The merged bank at date of merger had	2,183,777,000

. . .

BANK ONE, COLUMBUS, NATIONAL ASSOCIATION,
Columbus, Ohio, and The Central Trust Company, Newark, Ohio

Names of institutions and type of transaction	*Total assets*
Bank One, Columbus, National Association, Columbus, Ohio (7621), with	$4,864,154,000
and The Central Trust Company, Newark, Ohio, with	483,979,000
merged September 13, 1991, under charter and title of the former. The merged bank at date of merger had	5,394,749,000

. . .

BANK ONE, AKRON, NATIONAL ASSOCIATION,
Akron, Ohio, and The Central Trust Company of Northern Ohio, National Association, Canton, Ohio, and Bank One, Wooster, National Association, Wooster, Ohio

Names of institutions and type of transaction	*Total assets*
Bank One, Akron, National Association, Akron, Ohio (17008), with	$1,401,713,000
and The Central Trust Company of Northern Ohio, National Association, Canton, Ohio (76), with	972,585,000
and Bank One, Wooster, National Association, Wooster, Ohio (7670), with	109,982,000
merged September 13, 1991, under charter and title of the former. The merged bank at date of merger had	2,491,589,000

. . .

CENTRAL NATIONAL BANK & TRUST COMPANY OF ENID,
Enid, Oklahoma, and First National Bank and Trust Company of Blackwell, Blackwell, Oklahoma

Names of institutions and type of transaction	*Total assets*
Central National Bank & Trust Company of Enid, Enid, Oklahoma (12044), with	$178,985,000
and First National Bank and Trust Company of Blackwell, Blackwell, Oklahoma (14278), with	—
merged August 29, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

FIRST NATIONAL BANK AND TRUST COMPANY OF HOLDENVILLE,
Holdenville, Oklahoma, and First National Bank, Oklahoma City, Oklahoma

Names of institutions and type of transaction	*Total assets*
First National Bank and Trust Company of Holdenville, Holdenville, Oklahoma (5270), with	$100,616,000
and First National Bank, Oklahoma City, Oklahoma (21853), with	15,047,000
merged September 25, 1991, under charter and title of the former. The merged bank at date of merger had	102,070,000

. . .

THIRD NATIONAL BANK IN NASHVILLE,
Nashville, Tennessee, and Mid-South Bank & Trust Company, Murfreesboro, Tennessee

Names of institutions and type of transaction	*Total assets*
Third National Bank in Nashville, Nashville, Tennessee (13103), with	$2.686.280.[illegible]
and Mid-South Bank & Trust Company, Murfreesboro, Tennessee, with	473.435.000
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	3.145.824.000

. . .

FIRST TENNESSEE BANK, NATIONAL ASSOCIATION,
Memphis, Tennessee, and Valley Fidelity Bank and Trust Company, Knoxville, Tennessee

Names of institutions and type of transaction	*Total assets*
First Tennessee Bank, National Association, Memphis, Tennessee (336), with	$6.615.200.000
and Valley Fidelity Bank and Trust Company, Knoxville, Tennessee, with	544.600.000
merged September 1, 1991, under charter and title of the former. The merged bank at date of merger had	7.116.800.000

. . .

COMPTROLLER'S DECISION

On June 14, 1991, application was made to the Office of the Comptroller of the Currency (OCC), pursuant to the Bank Merger Act, 12 U.S.C. 1828(c), for prior authorization for First Tennessee Bank, National Association, Memphis, Tennessee (First), to merge with the Valley Fidelity Bank and Trust Company, Knoxville, Tennessee (Valley), under the charter and title of First Tennessee Bank, National Association. The application is based on an agreement finalized between the proponents on March 19, 1991.

On March 31, 1991, First, a wholly owned subsidiary of First Tennessee National Corporation, had total assets of $6.6 billion, total deposits of $5.2 billion, and operated numerous offices located in 18 cities throughout the state. On the same date, Valley, a wholly owned subsidiary of First American Bankshares, Inc., had total assets of $562 million, total deposits of $460 million and operated 14 offices located in Knoxville.

The relevant geographic market for this proposal is the area including and immediately surrounding the city of Knoxville where Valley operates all 14 of its offices and from which it derives the bulk of its deposits. Within this market there are 12 commercial banks operating 72 offices and five thrifts operating 27 offices. These 17 institutions compete for approximately $3 billion in deposits. First ranks third in the market with a 20 percent share of local deposits. Valley ranks fourth in the market with 13 percent of the deposits.

The resulting bank would become the largest depository in the relevant market with approximately 33 percent of the market's deposits. While the proposed merger would eliminate some existing competition, any adverse competitive effects are mitigated by the presence of 15 other depository institutions, including several of the largest banking organizations in the state.

The Bank Merger Act requires the OCC to consider ". . . the financial and managerial resources and future prospects of the existing and proposed institutions and the convenience and needs of the community to be served." We find that the financial and managerial resources of both banks do not raise concerns that would cause the application to be disapproved. The future propsects of the resulting institution are considered to be favorable, as are the effects of the proposal on the convenience and needs of the communities to be served.

A review of the record of this application and other information available to the OCC as a result of its regulatory responsibilities has revealed no evidence that the applicants' record of helping to meet the credit needs of their communities, including low- and moderate-income neighborhoods, is less than satisfactory.

We have analyzed this proposal pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) and find that it will not significantly lessen competition in the relevant market. Other factors considered in evaluating this proposal are satisfactory. Accordingly, the application is approved.

SUMMARY OF REPORT BY ATTORNEY GENERAL

We have reviewed this proposed transaction and conclude that it would not have a significantly adverse effect on competition.

. . .

MONTWOOD NATIONAL BANK,
El Paso, Texas, and The Valley Bank of El Paso, El Paso, Texas

Names of institutions and type of transaction	*Total assets*
Montwood National Bank, El Paso, Texas (16369), with	$73,293,000
and The Valley Bank of El Paso, El Paso, Texas, with	49,580,000
merged July 29, 1991, under charter and title of the former. The merged bank at date of merger had	122,873,000

. . .

LIBERTY NATIONAL BANK,
Austin, Texas, and The Capital National Bank in Austin, Austin, Texas

Names of institutions and type of transaction	*Total assets*
Liberty National Bank, Austin, Texas (18647), with	$49,271,000
and The Capital National Bank in Austin, Austin, Texas (17795), with	36,248,000
merged August 19, 1991, under charter and title of the former. The merged bank at date of merger had	85,509,000

. . .

THE EAST TEXAS NATIONAL BANK OF PALESTINE,
Palestine, Texas, and First Mexia Bank, Mexia, Texas

Names of institutions and type of transaction	*Total assets*
The East Texas National Bank of Palestine, Palestine, Texas (12556), with	$52,324,000
and First Mexia Bank, Mexia, Texas (15379), with	—
merged August 22, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

U.S. TRUST COMPANY OF TEXAS, NATIONAL ASSOCIATION,
Dallas, Texas, and U.S. Trust Company of Texas, Dallas, Texas

Names of institutions and type of transaction	*Total assets*
U.S. Trust Company of Texas, National Association, Dallas, Texas (18782), with	$18,195,000
and U.S. Trust Company of Texas, Dallas, Texas, with	1,580,000
merged August 31, 1991, under charter and title of the former. The merged bank at date of merger had	19,775,000

. . .

BECKLEY NATIONAL BANK,
Beckley, West Virginia, and The Merchants & Miners National Bank of Oak Hill, Oak Hill, West Virginia, and Cardinal State Bank, National Association, Beckley, West Virginia

Names of institutions and type of transaction	*Total assets*
Beckley National Bank, Beckley, West Virginia (10509), with	$217,726,000
and The Merchants & Miners National Bank of Oak Hill, Oak Hill, West Virginia (13885), with	90,014,000
and Cardinal State Bank, National Association, Beckley, West Virginia (18123), with	51,425,000
merged August 30, 1991, under charter 18123 and title "Beckley National Bank." The merged bank at date of merger had	359,165,000

. . .

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE,
Milwaukee, Wisconsin, and First Wisconsin Bank of Waukesha, Waukesha, Wisconsin

Names of institutions and type of transaction	*Total assets*
First Wisconsin National Bank of Milwaukee, Milwaukee, Wisconsin (64), with	$3,920,052,000
and First Wisconsin Bank of Waukesha, Waukesha, Wisconsin, with	58,433,000
merged July 1, 1991, under charter and title of the former. The merged bank at date of merger had	3,978,703,000

. . .

FIRST WISCONSIN NATIONAL BANK OF MILWAUKEE,
Milwaukee, Wisconsin, and First Wisconsin National Bank of Brookfield, Brookfield, Wisconsin

Names of institutions and type of transaction	*Total assets*
First Wisconsin National Bank of Milwaukee, Milwaukee, Wisconsin (64), with	$3,978,703,000
and First Wisconsin National Bank of Brookfield, Brookfield, Wisconsin (15381), with	125,974,000
merged August 1, 1991 under charter and title of the former. The merged bank at date of merger had	4,099,332,000

* * *

FIRST INTERSTATE BANK OF CASPER, NATIONAL ASSOCIATION,
Casper, Wyoming, and First Interstate Bank of Laramie, National Association, Laramie, Wyoming, and First Interstate Bank of Riverton, National Association, Riverton, Wyoming

Names of institutions and type of transaction	*Total assets*
First Interstate Bank of Casper, National Association, Casper, Wyoming (6850), with	$191,108,000
and First Interstate Bank of Laramie, National Association, Laramie, Wyoming (4989), with	95,932,000
and First Interstate Bank of Riverton, National Association, Riverton, Wyoming (14103), with	71,178,000
merged July 1, 1991, under charter and title of the former. The merged bank at date of merger had	358,218,000

* * *

SIMMONS FIRST NATIONAL BANK,
Pine Bluff, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	*Total assets*
Simmons First National Bank, Pine Bluff, Arkansas (6680), with	$507,637,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

METROPOLITAN NATIONAL BANK,
Little Rock, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	*Total assets*
Metropolitan National Bank, Little Rock, Arkansas (15836), with	$160,482,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

WORTHEN NATIONAL BANK OF ARKANSAS,
Little Rock, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	*Total assets*
Worthen National Bank of Arkansas, Little Rock, Arkansas (16009), with	$928,270,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date merger had	—

* * *

WORTHEN NATIONAL BANK OF HOT SPRINGS,
Hot Springs, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	*Total assets*
Worthen National Bank of Hot Springs, Hot Springs, Arkansas (2832), with	$928,270,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST COMMERCIAL BANK, NATIONAL ASSOCIATION,
Little Rock, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
First Commercial Bank, National Association, Little Rock, Arkansas (13949), with	$983,436,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

FIRST NATIONAL BANK IN GREEN FOREST,
Green Forest, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
First National Bank in Green Forest, Green Forest, Arkansas (13543), with	$89,510,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

UNION NATIONAL BANK OF ARKANSAS,
Little Rock, Arkansas, and First Savings of Arkansas, Federal Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
Union National Bank of Arkansas, Little Rock, Arkansas (15602), with	$536,018,000
and First Savings of Arkansas, Federal Association, Little Rock, Arkansas, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE CITIZENS NATIONAL BANK OF HOPE,
Hope, Arkansas, and Texarkana Federal Savings and Loan Association, Federal Association, Texarkana, Arkansas

Names of institutions and type of transaction	Total assets
The Citizens National Bank of Hope, Hope, Arkansas (10579), with	$155,632,000
and Texarkana Federal Savings and Loan Association, Federal Association, Texarkana, Arkansas, with	—
merged August 30, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

SIMMONS FIRST NATIONAL BANK,
Pine Bluff, Arkansas, and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
Simmons First National Bank, Pine Bluff, Arkansas (6680), with	$507,637,000
and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

ONE NATIONAL BANK,
Little Rock, Arkansas, and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
One National Bank, Little Rock, Arkansas (14818), with	$224,950,000
and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

UNION NATIONAL BANK OF ARKANSAS,
Little Rock, Arkansas, and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
Union National Bank of Arkansas, Little Rock, Arkansas (15602), with	$536,018,000
Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST COMMERCIAL BANK, NATIONAL ASSOCIATION,
Little Rock, Arkansas, and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
First Commercial Bank, National Association, Little Rock, Arkansas, and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF CONWAY,
Conway, Arkansas, and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas

Names of institutions and type of transaction	Total assets
The First National Bank of Conway, Conway, Arkansas (13719), with	$207,751,000
and Savers Savings Association, A Federal Savings and Loan Association, Little Rock, Arkansas, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

QUEEN CITY BANK, NATIONAL ASSOCIATION,
Long Beach, California, and Beach Savings Bank, F.S.B., Fountain Valley, California

Names of institutions and type of transaction	Total assets
Queen City Bank, National Association, Long Beach, California (17933), with	$82,061,000
and Beach Savings Bank, F.S.B., Fountain Valley, California, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BANK OF AMERICA, N.T.& S.A.,
San Francisco, California, and Santa Barbara Federal Savings and Loan Association, Santa Barbara, California

Names of institutions and type of transaction	Total assets
Bank of America, N.T. & S.A., San Francisco (13044), with	$97,074,000,000
and Santa Barbara Federal Savings and Loan Association, Santa Barbara, California, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

CENTRAL BANK DENVER, NATIONAL ASSOCIATION,
Denver, Colorado, and Capitol Federal Savings & Loan Association, Aurora, Colorado

Names of institutions and type of transaction	Total assets
Central Bank Denver, National Association, Denver, Colorado (21860), with	$979,663,000
and Capitol Federal Savings & Loan Association, Aurora, Colorado, with	—
merged July 12, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE FIRST NATIONAL BANK OF MEEKER,
Meeker, Colorado, and Great West, A Federal Savings Bank, Craig, Colorado

Names of institutions and type of transaction	*Total assets*
The First National Bank of Meeker, Meeker, Colorado (7435), with	$26,377,000
and Great West, A Federal Savings Bank, Craig, Colorado, with	—
merged August 16, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

FIRST NATIONAL BANK IN LAMAR,
Lamar, Colorado, and Heritage Federal Savings Association, Lamar, Colorado

Names of institutions and type of transaction	*Total assets*
First National Bank in Lamar, Lamar, Colorado (14254), with	$65,695,000
and Heritage Federal Savings Association, Lamar, Colorado, with	—
merged August 23, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE CHASE MANHATTAN BANK OF CONNECTICUT, NATIONAL ASSOCIATION,
Bridgeport, Connecticut, and Citytrust, Bridgeport, Connecticut, and Mechanics and Farmers Savings Bank, F.S.B., Bridgeport, Connecticut

Names of institutions and type of transaction	*Total assets*
The Chase Manhattan Bank of Connecticut, National Association, Bridgeport, Connecticut (22478), with	—
and Citytrust, Bridgeport, Connecticut, with	—
and Mechanics and Farmers Savings Bank, F.S.B., Bridgeport, Connecticut, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

CENTRAL BANK OF THE SOUTH, NATIONAL ASSOCIATION,
Pensacola, Florida, and Citizens & Builders Federal Savings Bank, Pensacola, Florida

Names of institutions and type of transaction	*Total assets*
Central Bank of the South, National Association, Pensacola, Florida (22466), with	—
and Citizens & Builders Federal Savings Bank, Pensacola, Florida, with	—
merged July 12, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

REPUBLIC NATIONAL BANK OF MIAMI,
Miami, Florida, and Ensign Federal Savings Bank, New York, New York

Names of institutions and type of transaction	*Total assets*
Republic National Bank of Miami, Miami, Florida (15555), with	$1,314,541,000
and Ensign Federal Savings Bank, New York, New York, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

FIRST UNION NATIONAL BANK OF FLORIDA,
Jacksonville, Florida, and Florida Federal Savings, F.S.B., St. Petersburg, Florida

Names of institutions and type of transaction	*Total assets*
First Union National Bank of Florida, Jacksonville, Florida (17695), with	$16,800,848,000
and Florida Federal Savings, F.S.B., St. Petersburg, Florida, with	—
merged August 2, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

SOUTHTRUST BANK OF JACKSONVILLE, NATIONAL ASSOCIATION,
Jacksonville, Florida, and Duval Federal Savings Association, Jacksonville, Florida

Names of institutions and type of transaction	Total assets
Southtrust Bank of Jacksonville, National Association, Jacksonville, Florida (16441), with	$62,330,000
and Duval Federal Savings Association, Jacksonville, Florida, with	—
merged August 16, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST UNION NATIONAL BANK OF FLORIDA,
Jacksonville, Florida, and Gold Coast Federal Savings, F.S.B., Plantation, Florida

Names of institutions and type of transaction	Total assets
First Union National Bank of Florida, Jacksonville, Florida (17695), with	$16,800,848,000
and Gold Coast Federal Savings, F.S.B., Plantation, Florida, with	—
merged August 23, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST NATIONAL BANK AND TRUST COMPANY OF THE TREASURE COAST,
Stuart, Florida and American Pioneer Federal Savings Bank, Orlando, Florida

Names of institutions and type of transaction	Total assets
First National Bank and Trust Company of the Treasure Coast, Stuart, Florida (14838), with	$508,918,000
and American Pioneer Federal Savings Bank, Orlando, Florida, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST UNION NATIONAL BANK OF FLORIDA,
Jacksonville, Florida, and American Pioneer Federal Savings Bank, Orlando, Florida

Names of institutions and type of transaction	Total assets
First Union National Bank of Florida, Jacksonville, Florida (17695), with	$16,800,848,000
and American Pioneer Federal Savings Bank, Orlando, Florida, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

RIVERSIDE NATIONAL BANK OF FLORIDA,
Fort Pierce, Florida, and First Citizens Savings and Loan Association, Fort Pierce, Florida

Names of institutions and type of transaction	Total assets
Riverside National Bank of Florida, Fort Pierce, Florida (17437), with	$199,299,000
and First Citizens Savings and Loan Association, Fort Pierce, Florida, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

GEORGIA NATIONAL BANK,
Athens, Georgia, and Fulton Federal Savings and Loan Association, Atlanta, Georgia

Names of institutions and type of transaction	Total assets
Georgia National Bank, Athens, Georgia (21529), with	$39,593,000
and Fulton Federal Savings and Loan Association, Atlanta, Georgia, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

WACHOVIA BANK OF GEORGIA, NATIONAL ASSOCIATION,
Atlanta, Georgia, and Fulton Federal Savings Association, Atlanta, Georgia

Names of institutions and type of transaction	Total assets
Wachovia Bank of Georgia, National Association, Atlanta, Georgia (1559), with	$8,325,636,000
and Fulton Federal Savings Association, Atlanta, Georgia, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

MERCHANTILE BANK OF ILLINOIS NATIONAL ASSOCIATION,
Alton, Illinois, and Germania Bank, A Federal Savings Bank, Alton, Illinois

Names of institutions and type of transaction	*Total assets*
Mercantile Bank of Illinois National Association, Alton, Illinois (13464), with	$220,418,000
and Germania Bank, A Federal Savings Bank, Alton, Illinois, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE FIRST NATIONAL BANK OF CHICAGO,
Chicago, Illinois, and United Savings Association of America, Chicago, Illinois

Names of institutions and type of transaction	*Total assets*
The First National Bank of Chicago, Chicago, Illinois (8), with	$32,221,200,000
and United Savings Association of America, Chicago, Illinois, with	—
merged September 27, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

LANDMANDS NATIONAL BANK,
Audubon, Iowa, and Home Federal Savings & Loan Association of Harlan, Harlan, Iowa

Names of institutions and type of transaction	*Total assets*
Landmands National Bank, Audubon, Iowa (9619), with	$22,702,000
and Home Federal Savings & Loan Association of Harlan, Harlan, Iowa, with	—
merged September 27, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

TRANS FINANCIAL BANK, NATIONAL ASSOCIATION,
Bowling Green, Kentucky, and Future Federal Savings Bank, Louisville, Kentucky

Names of institutions and type of transaction	*Total assets*
Trans Financial Bank, National Association, Bowling Green, Kentucky (5900), with	$369,617,000
and Future Federal Savings Bank, Louisville, Kentucky, with	—
merged August 30, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

TRUSTMARK NATIONAL BANK, First
Jackson, Mississippi, and Jackson Federal Savings Bank, Jackson, Mississippi

Names of institutions and type of transaction	*Total assets*
Trustmark National Bank, Jackson, Mississippi (10523), with	$3,741,000,000
and Jackson Federal Savings Bank, Jackson, Mississippi, with	—
merged July 12, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE CITIZENS NATIONAL BANK OF MERIDAN,
Meridan, Mississippi, and Charter Savings Bank, F.S.B., Hattiesburg, Mississippi

Names of institutions and type of transaction	*Total assets*
The Citizens National Bank of Meridan, Meridan, Mississippi (7266), with	$329,800,000
and Charter Savings Bank, F.S.B., Hattiesburg, Mississippi, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

MERCANTILE BANK OF ST. LOUIS, NATIONAL ASSOCIATION, St Louis
Clayton, Missouri, and Germania Bank, A Federal Savings Bank, Alton, Missouri

Names of institutions and type of transaction	*Total assets*
Mercantile Bank of St. Louis, National Association, Clayton, Missouri (21684), with	$4,398,263,000
and Germania Bank, A Federal Savings Bank, Alton, Missouri, with	—
merged [illegible] under charter and title of the former. The merged bank at date of merger had	—

FIRST FIDELITY BANK, NATIONAL ASSOCIATION, NEW JERSEY, Newark, New Jersey, and Ensign Federal Savings Bank, New York, New York

Names of institutions and type of transaction	Total assets
First Fidelity Bank, National Association, New Jersey, Newark, New Jersey (1452), with	$12,841,580,000
and Ensign Federal Savings Bank, New York, New York, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

NEW JERSEY NATIONAL BANK, Ewing Township, New Jersey, and Old Borough Federal Savings, Trenton, New Jersey

Names of institutions and type of transaction	Total assets
New Jersey National Bank, Ewing Township, New Jersey (1327), with	$2,953,052,000
and Old Borough Federal Savings, Trenton, New Jersey, with	—
merged August 23, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

UNITED NATIONAL BANK, Plainfield, New Jersey, and First Atlantic, F.S.A., South Plainfield, New Jersey

Names of institutions and type of transaction	Total assets
United National Bank, Plainfield, New Jersey (5621), with	$637,003,000
and First Atlantic, F.S.A., South Plainfield, New Jersey, with	—
merged September 13, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

FIRST NATIONAL BANK AND TRUST COMPANY, Asheboro, North Carolina, and Southeastern Federal Savings Bank, Charlotte, North Carolina

Names of institutions and type of transaction	Total assets
First National Bank and Trust Company, Asheboro, North Carolina (8953), with	$204,847,000
and Southeastern Federal Savings Bank, Charlotte, North Carolina, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

SOUTHERN NATIONAL BANK OF NORTH CAROLINA, Lumberton, North Carolina, and Southeastern Federal Savings Bank, Charlotte, North Carolina

Names of institutions and type of transaction	Total assets
Southern National Bank of North Carolina, Lumberton, North Carolina (10610), with	$2,803,665,000
and Southeastern Federal Savings Bank, Charlotte, North Carolina, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

SOUTHERN NATIONAL BANK OF NORTH CAROLINA, Lumberton, North Carolina and Preferred Savings Bank, F.S.B., High Point, North Carolina

Names of institutions and type of transaction	Total assets
Southern National Bank of North Carolina, Lumberton, North Carolina (10610), with	$2,803,665,000
and Preferred Savings Bank, F.S.B., High Point, North Carolina, with	—
merged September 27, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE UNITED NATIONAL BANK & TRUST COMPANY, Canton, Ohio, and First Savings and Loan Company, F.A., Canton, Ohio

Names of institutions and type of transaction	Total assets
The United National Bank & Trust Company, Canton, Ohio (14501), with	$380,808,000
and First Savings and Loan Company, F.A., ~~Canton~~ Ohio, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

THE WAYNE COUNTY NATIONAL BANK OF WOOSTER, Massillon
Wooster, Ohio, and First Savings and Loan ~~of Massillon~~, F.A., ~~Wooster~~, Ohio

Names of institutions and type of transaction	Total assets
The Wayne County National Bank of Wooster, Wooster, Ohio (828), with	$241,593,000
and First Savings and Loan of Massillon, F.A., Wooster, Ohio, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

BANK ONE, CLEVELAND, NATIONAL ASSOCIATION,
Cleveland, Ohio, and Freedom Savings Association, F.A., Columbus, Ohio

Names of institutions and type of transaction	Total assets
Bank One, Cleveland, National Association, Cleveland, Ohio (14686), with	1,901,784,000
and Freedom Savings Association, F.A., Columbus, Ohio, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

BANK ONE, DAYTON, NATIONAL ASSOCIATION,
Dayton, Ohio, and Merchants and Mechanics Federal Savings and Loan Association, Springfield, Ohio

Names of institutions and type of transaction	Total assets
Bank One, Dayton, National Association, Dayton, Ohio (2604), with	$2,790,152,000
and Merchants and Mechanics Federal Savings and Loan Association, Springfield, Ohio, with	—
merged August 23, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

BANK OF OKLAHOMA, NATIONAL ASSOCIATION,
Tulsa, Oklahoma, and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma

Names of institutions and type of transaction	Total assets
Bank of Oklahoma, National Association, Tulsa, Oklahoma (13679), with	$1,794,830,000
and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE FIRST NATIONAL BANK AND TRUST COMPANY OF TULSA,
Tulsa, Oklahoma, and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma

Names of institutions and type of transaction	Total assets
The First National Bank and Trust Company of Tulsa, Tulsa, Oklahoma (5171), with	$842,626,000
and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE STILLWATER NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY,
Oklahoma City, Oklahoma, and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma

Names of institutions and type of transaction	Total assets
The Stillwater National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma (5347), with	$255,005,000
and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE LIBERTY NATIONAL BANK AND TRUST COMPANY OF OKLAHOMA CITY,
Oklahoma City, Oklahoma, and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma

Names of institutions and type of transaction	Total assets
The Liberty National Bank and Trust Company of Oklahoma City, Oklahoma City, Oklahoma (11230), with	$1,369,537,000
and Continental Federal Savings and Loan Association, Oklahoma City, Oklahoma, with	—
merged August [illegible], under charter and title of the former. The merged bank at date of merger had	—

. . .

STATE BANK, NATIONAL ASSOCIATION,
Tulsa, Oklahoma, and State Federal Savings Association, Tulsa, Oklahoma

Names of institutions and type of transaction	*Total assets*
State Bank, National Association, Tulsa, Oklahoma (18368), with	$19,531,000
and State Federal Savings Association, Tulsa, Oklahoma, with	—
merged August 16, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BANK OF AMERICA TEXAS, NATIONAL ASSOCIATION,
Houston, Texas, and Commerce Federal Savings Association, San Antonio, Texas

Names of institutions and type of transaction	*Total assets*
Bank of America Texas, National Association, Houston, Texas (22429), with	$30,043,000
and Commerce Federal Savings Association, San Antonio, Texas, with	—
merged July 12, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BANK ONE TEXAS, NATIONAL ASSOCIATION,
Dallas, Texas, and Commerce Federal Savings Association, Conroe, Texas

Names of institutions and type of transaction	*Total assets*
Bank One, Texas, National Association, Dallas, Texas (21969), with	$12,762,545,000
and Commerce Federal Savings Association, Conroe, Texas, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

COMMERCIAL NATIONAL BANK IN NACOGOOCHES,
Nacogooches, Texas, and Superior Federal Savings Bank, Nacogooches, Texas

Names of institutions and type of transaction	*Total assets*
Commercial National Bank in Nacogooches, Nacogooches, Texas (14371), with	$107,487,000
and Superior Federal Savings Bank, Nacogooches, Texas, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BAYSHORE NATIONAL BANK OF LA PORTE,
La Porte, Texas, and Liberty County Federal Savings Association, Liberty, Texas

Names of institutions and type of transaction	*Total assets*
Bayshore National Bank of La Porte, La Porte, Texas (15468), with	$98,623,000
and Liberty County Federal Savings Association, Liberty, Texas, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

INTER NATIONAL BANK,
McAllen, Texas, and Hidalgo Savings and Loan Association, Edinburg, Texas

Names of institutions and type of transaction	*Total assets*
Inter National Bank, McAllen, Texas (18480), with	$64,580,000
and Hidalgo Savings and Loan Association, Edinburg, Texas, with	—
merged August 9, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

AMARILLO NATIONAL BANK,
Amarillo, Texas, and Citizens Security Bank, Federal Association, Borger, Texas

Names of institutions and type of transaction	*Total assets*
Amarillo National Bank, Amarillo, Texas (14206), with	$708,788,000
and Citizens Security Bank, Federal Association, Borger, Texas, with	—
merged August 16, 1991, under charter and title of the former. The merged bank at date of merger had	—

* * *

BAYSHORE NATIONAL BANK OF LA PORTE,
La Porte, Texas, and Bayshore Federal Savings Association, La Porte, Texas

Names of institutions and type of transaction	Total assets
Bayshore National Bank of La Porte, La Porte, Texas (15468), with	$98,623,000
and Bayshore Federal Savings Association, La Porte, Texas, with	—
merged September 20, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

PUGET SOUND NATIONAL BANK,
Tacoma, Washington, and Family Savings and Loan Association, F.A., Seattle, Washington

Names of institutions and type of transaction	Total assets
Puget Sound National Bank, Tacoma, Washington (12292), with	$2,940,428,000
and Family Savings and Loan Association, F.A., Seattle, Washington, with	—
merged July 19, 1991, under charter and title of the former. The merged bank at date of merger had	—

. . .

THE RAWLINS NATIONAL BANK,
Rawlins, Wyoming, and Westland Federal Savings & Loan Association, Rawlins, Wyoming

Names of institutions and type of transaction	Total assets
The Rawlins National Bank, Rawlins, Wyoming (5413), with	$81,445,000
and Westland Federal Savings & Loan Association, Rawlins, Wyoming, with	—
merged July 26, 1991, under charter and title of the former. The merged bank at date of merger had	—

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Tables provided by the Banking and Research and Statistics Division.

Assets, liabilities and capital accounts of national banks, September 30, 1990, and September 30, 1991
(Dollar amounts in millions)

	September 30, 1990	*September 30, 1991*	*Change September 30, 1990 – September 30, 1991 fully consolidated*	
	Consolidated foreign and domestic	*Consolidated foreign and domestic*	*Amount*	*Percent*
Assets				
Cash and balances due from depository institutions				
Noninterest-bearing balances and currency and coin	$118,101	$129,056	$10,954	9.28
Interest-bearing balances	57,707	56,287	–1,420	2.46
Securities	314,857	343,852	28,995	9.21
Federal funds sold and securities purchased under agreements to resell	86,764	99,813	13,049	15.04
Loans and leases, net of unearned income	1,277,779	1,232,557	–45,222	–3.54
Less allowance for loan and lease losses	31,917	32,747	829	2.60
Less allocated transfer risk reserve	169	233	64	37.67
Net loans and leases	1,245,693	1,199,614	–46,079	–3.70
Premises and fixed assets	29,470	30,025	554	1.88
Other real estate owned	12,629	16,998	4,369	34.60
All other assets	113,962	114,726	764	0.67
Total assets	1,979,183	1,990,371	11,188	0.57
Liabilities				
Deposits:				
Noninterest-bearing deposits in domestic offices	259,781	279,606	19,825	7.63
Interest-bearing deposits in domestic offices	1,061,124	1,088,153	27,029	2.55
Total domestic deposits	1,320,905	1,367,760	46,855	3.55
Total foreign deposits	204,597	189,380	–15,217	–7.44
Total deposits	1,525,502	1,557,140	31,638	2.07
Federal funds purchased and securities sold under agreements to repurchase	160,560	145,694	–14,866	–9.26
Demand notes issued to the U.S. Treasury	22,992	20,471	–2,521	–10.97
Other borrowed money	69,522	65,072	–4,450	–6.40
Subordinated notes and debentures	10,854	15,419	4,565	42.06
All other liabilities	69,850	61,005	–8,846	12.66
Total Liabilities	1,859,282	1,864,850	5,569	0.30
Limited-life preferred stock	77	1	–76	–98.70
Equity Capital				
Perpetual preferred stock	465	461	4	0.83
Common Stock	16,565	16,336	229	1.38
Surplus	46,358	53,481	7,123	15.36
Net undivided profits and capital reserves	56,784	55,805	–980	1.73
Cumulative foreign currency translation adjustments	356	–549	193	54.11
Total equity capital	119,817	125,516	5,699	4.76
Total liabilities, limited-life preferred stock, and equity capital	1,979,183	1,990,371	11,188	0.57

Income and expenses of foreign and domestic offices and subsidiaries of national banks, September 30, 1991
(Dollar amounts in millions)

	Consolidated foreign and domestic	*Percent distribution*
Interest income		
Interest and fee income on loans	$95,293	74.8
Income from lease financing receivables	2,271	1.8
Interest on balances due from depository institutions	3,733	2.9
Interest and dividend income on securities	20,297	15.9
Interest income from assets held in trading accounts	1,703	1.3
Interest income from federal funds sold and securities purchase agreements		
to resell	4,090	3.2
Total interest income	127,387	100.0
Interest expense		
Interest on deposits	61,544	81.9
Expense of federal funds purchased and securities sold under agreements to		
repurchase	6,807	9.1
Interest on demand notes issued to the U.S. Treasury and on other borrowed money	5,720	7.6
Interest on mortgage indebtedness and obligations under capital	90	0.1
Interest on notes and debentures subordinated to deposits	1,003	1.3
Total interest expense	75,164	100.0
Net interest income	52,280	
Provision for loan and lease losses	15,292	
Provision for allocated transfer risk	26	
Noninterest income		
Service charges on deposit accounts	5,921	22.5
Other noninterest income	20,405	77.5
Total noninterest income	26,326	100.0
Gains and losses on securities not held in trading accounts	950	
Noninterest expense		
Salaries and employee benefits	23,172	42.5
Expenses of premises and fixed assets (net of rental income)	7,865	14.4
Other noninterest expense	23,460	43.0
Total noninterest expense	54,497	100.0
Income (loss) before income taxes and extraordinary items and other adjustments	9,733	
Applicable income taxes	3,574	
Income before extraordinary items and other adjustments	6,249	
Extraordinary items and other adjustments, net of taxes	725	
Net income	6,974	
Total cash dividends declared*	5,250	
Recoveries credited to allowance for possible loan losses	2,065	
Losses charged to allowance for possible loan losses	17,380	
Net loan losses	15,3162	

*Banks with assets of less than $100 million report this item only in their December Report of Income

Loans of national banks, by states, September 30, 1991
(Dollar amounts in millions)

	Domestic offices						
	Total loans, gross	*Loans secured by real estate*	*Loans to farmers*	*Commercial and industrial loans*	*Personal loans to individuals*	*Other loans*	*[illegible] foreign offices*
All national banks	$1,240,655	$478,966	$15,399	$293,918	$106,100	$211,709	[illegible]
Alabama	10,771	4,609	73	3,104	776	2,210	0
Alaska	1,410	576	1	514	38	275	[illegible]
Arizona	10,696	3,328	376	1,969	4,452	571	0
Arkansas	6,017	2,954	285	1,291	1,208	279	0
California	179,379	84,625	2,083	32,398	2,329	29,297	[illegible]8,646
Colorado	10,103	4,003	435	2,057	2,872	735	0
Connecticut	13,243	8,287	14	3,079	151	1,712	0
Delaware	12,536	535	1	133	9,019	2,848	0
District of Columbia	8,605	4,337	0	2,137	45	1,419	666
Florida	63,241	35,970	159	8,995	5,914	12,139	64
Georgia	24,106	9,856	85	6,415	2,078	5,491	181
Hawaii	214	129	0	72	11	2	0
Idaho	4,978	1,369	560	1,188	1,469	391	0
Illinois	64,745	20,380	892	24,108	6,342	7,396	5,626
Indiana	21,260	8,600	332	5,162	3,215	3,951	0
Iowa	6,524	2,528	664	1,471	1,439	423	0
Kansas	6,787	2,679	802	1,515	1,486	305	0
Kentucky	11,029	4,485	154	2,700	1,361	2,326	3
Louisiana	11,208	4,753	86	2,931	1,274	1,880	285
Maine	1,770	1,259	4	259	188	60	0
Maryland	18,438	8,129	18	3,302	4,203	2,561	224
Massachusetts	30,444	10,242	25	11,998	156	3,707	4,316
Michigan	34,132	13,131	157	11,139	2,187	6,039	1,479
Minnesota	23,630	8,456	580	7,724	1,525	5,214	132
Mississippi	5,162	2,273	121	1,245	760	764	0
Missouri	17,744	8,051	314	4,683	1,931	2,764	0
Montana	2,126	628	229	420	793	56	0
Nebraska	6,878	1,734	1,195	1,144	2,420	384	0
Nevada	6,190	1,515	13	409	3,904	349	0
New Hampshire	1,054	397	0	241	392	24	0
New Jersey	44,853	24,245	22	10,928	2,810	6,669	178
New Mexico	3,962	1,787	130	610	790	645	0
New York	216,089	57,195	328	35,426	5,175	28,311	89,654
North Carolina	37,298	15,389	140	12,116	395	8,610	647
North Dakota	1,619	580	244	372	369	54	0
Ohio	58,637	21,095	337	15,082	6,111	15,943	69
Oklahoma	6,914	2,943	572	1,749	880	771	0
Oregon	12,374	3,835	289	3,940	295	4,008	8
Pennsylvania	68,213	24,387	105	22,193	4,495	15,413	1,621
Rhode Island	8,691	3,575	0	2,886	198	2,006	25
South Carolina	13,474	6,818	57	2,539	1,803	2,257	0
South Dakota	10,768	726	360	1,546	7,971	166	0
Tennessee	15,157	6,366	95	3,833	944	3,919	0
Texas	57,553	19,364	1,507	19,665	5,030	11,363	[illegible]
Utah	4,665	1,758	110	1,062	146	1,589	0
Vermont	1,759	1,114	21	388	196	41	0
Virginia	18,829	8,301	127	4,260	732	[illegible]	0
Washington	25,651	10,913	946	6,511	721	6,466	[illegible]
West Virginia	5,706	2,928	12	1,006	1,594	166	[illegible]
Wisconsin	13,132	5,523	238	3,786	1,259	[illegible]	16
Wyoming	849	276	102	205	[illegible]	[illegible]	[illegible]
Puerto Rico	41	29	0	10	[illegible]	0	[illegible]

*Zeros indicate amounts of less than $500,000

Deposits of national banks, by states, September 30, 1991
(Dollar amounts in millions)

	Total demand deposits at domestic offices	All NOW accounts	Money market depost accounts	Large time deposits	All other deposits at domestic offices	Total deposits at foreign offices	Total consolidated deposits
All national banks	$271,076	$131,733	$251,280	$184,213	$529,457	$189,380	$1,557,140
Alabama	2,373	1,427	2,930	1,748	5,684	245	14,406
Alaska	817	203	362	327	873	0	2,584
Arizona	2,797	1,661	3,870	1,269	5,779	0	15,376
Arkansas	1,702	1,643	1,247	1,393	5,141	0	11,127
California	35,495	15,807	39,006	20,733	48,726	28,534	188,301
Colorado	4,225	2,575	3,832	1,374	5,532	99	17,637
Connecticut	3,979	1,723	2,418	1,573	9,513	192	19,398
Delaware	293	86	1,554	4,971	1,291	0	8,196
District of Columbia	2,377	1,265	2,598	2,772	2,525	1,459	12,996
Florida	13,515	8,265	14,959	12,188	35,299	206	84,432
Georgia	7,247	2,866	5,518	3,845	10,737	428	30,641
Hawaii	53	34	28	46	110	0	271
Idaho	922	656	978	506	2,502	0	5,565
Illinois	15,879	5,958	10,277	17,535	26,904	14,949	91,502
Indiana	4,711	2,777	4,449	2,845	11,197	177	26,156
Iowa	1,587	1,298	1,255	577	5,173	0	9,890
Kansas	1,724	1,491	1,877	1,209	5,729	0	12,030
Kentucky	2,708	1,831	1,316	1,470	6,551	238	14,114
Louisiana	3,775	1,894	3,107	2,936	7,333	38	19,083
Maine	241	239	259	159	1,243	0	2,142
Maryland	3,888	1,396	2,982	3,857	9,072	603	21,798
Massachusetts	6,035	2,509	7,782	4,587	9,754	4,874	35,541
Michigan	7,537	2,619	7,575	4,559	17,260	3,094	42,645
Minnesota	6,377	3,258	5,624	2,659	11,033	239	29,189
Mississippi	1,341	1,051	1,282	1,132	3,870	0	8,676
Missouri	5,296	3,036	4,663	1,900	11,044	74	26,014
Montana	528	470	650	190	1,417	0	3,254
Nebraska	1,736	1,341	1,231	651	5,228	0	10,187
Nevada	1,090	533	1,295	646	1,461	0	5,026
New Hampshire	304	186	138	329	558	0	1,514
New Jersey	11,436	6,035	8,132	4,515	30,513	29	60,659
New Mexico	887	914	903	798	3,058	0	6,561
New York	30,662	8,980	31,897	19,554	37,895	123,327	252,316
North Carolina	7,724	2,285	5,482	8,094	12,142	2,520	38,246
North Dakota	363	472	404	198	1,475	0	2,912
Ohio	11,735	6,534	10,334	6,908	32,729	1,420	69,661
Oklahoma	2,865	1,772	1,792	1,533	5,812	57	13,831
Oregon	2,637	1,809	2,786	858	4,979	6	13,075
Pennsylvania	15,811	6,203	13,270	10,167	36,383	4,111	85,945
Rhode Island	1,229	458	1,391	3,073	2,432	426	9,009
South Carolina	2,551	2,040	2,864	1,444	5,703	0	14,602
South Dakota	540	492	1,072	1,589	3,741	0	7,433
Tennessee	3,881	2,121	4,359	1,800	9,339	24	21,525
Texas	21,566	12,192	18,498	15,416	36,580	1,453	105,705
Utah	1,168	796	1,093	336	2,604	92	6,089
Vermont	235	229	396	207	1,078	0	2,144
Virginia	4,054	2,587	2,385	3,444	10,681	148	23,298
Washington	6,539	2,898	5,727	2,246	9,983	139	27,532
West Virginia	1,137	985	743	619	5,346	0	8,830
Wisconsin	3,214	1,524	2,395	1,177	7,650	182	16,142
Wyoming	284	306	296	235	768	0	1,888
[illegible]	5	2	0	14	27	0	49

[illegible] than $500,000

Interest income of national banks, September 30, 1991
(Dollar amounts in millions)

	Interest and fees on loans	Income from lease financing	Interest due from other depository institutions	Interest and dividends on securities	Interest from trading account assets	Interest from federal funds transactions	Total interest income
All national banks	$95,293	$2,271	$3,733	$20,297	$1,703	$4,090	$127,387
Alabama	815	4	4	305	7	15	1,150
Alaska	115	1	3	95	0	3	216
Arizona	818	19	18	206	9	63	1,132
Arkansas	467	1	5	231	6	28	738
California	13,795	279	311	768	270	307	15,728
Colorado	841	10	33	291	1	85	1,262
Connecticut	737	0	2	247	0	37	1,023
Delaware	1,397	6	5	40	0	21	1,468
District of Columbia	634	9	53	174	1	60	931
Florida	4,120	19	58	1,123	1	300	5,622
Georgia	1,960	31	17	489	6	75	2,579
Hawaii	16	0	0	3	0	0	20
Idaho	372	9	5	84	5	7	482
Illinois	4,671	18	562	1,160	200	310	6,921
Indiana	1,610	40	18	407	1	55	2,130
Iowa	492	1	3	264	1	25	786
Kansas	563	5	6	308	0	38	920
Kentucky	789	16	9	209	0	49	1,072
Louisiana	909	2	26	414	0	48	1,400
Maine	145	0	0	22	0	4	171
Maryland	1,523	16	30	323	21	61	1,973
Massachusetts	2,380	136	300	429	16	88	3,350
Michigan	2,456	24	105	750	15	60	3,411
Minnesota	1,695	44	13	497	7	98	2,353
Mississippi	405	0	7	212	0	27	651
Missouri	1,294	13	13	469	39	100	1,928
Montana	156	0	2	55	0	29	242
Nebraska	588	5	4	199	0	25	820
Nevada	888	0	0	66	1	5	960
New Hampshire	85	0	2	21	0	3	112
New Jersey	3,276	26	62	706	5	162	4,237
New Mexico	300	1	2	118	0	45	466
New York	18,349	902	1,488	2,079	857	392	24,068
North Carolina	2,537	70	83	641	101	133	3,565
North Dakota	127	1	3	64	0	16	210
Ohio	4,540	129	55	1,025	31	164	5,945
Oklahoma	461	0	14	309	1	41	826
Oregon	897	65	0	128	10	28	1,128
Pennsylvania	4,661	157	163	1,538	27	134	6,680
Rhode Island	366	116	2	76	0	79	638
South Carolina	1,043	5	4	245	5	36	1,339
South Dakota	1,151	5	1	62	0	5	1,224
Tennessee	1,145	15	36	373	19	52	1,639
Texas	4,240	15	150	2,017	14	657	7,093
Utah	349	12	12	92	16	12	493
Vermont	148	0	0	20	0	2	170
Virginia	1,483	8	25	307	2	40	1,865
Washington	1,966	20	4	128	8	20	2,146
West Virginia	444	0	5	212	0	21	682
Wisconson	1,008	14	9	237	1	21	1,291
Wyoming	64	0	1	59	0	6	130
Puerto Rico	3	0	0	1	0	0	4

*Zeros indicate amounts of less than $500,000

Noninterest income of national banks, September 30, 1991
(Dollar amounts in millions)

	Service charges on deposit accounts	Gains (Losses) on foreign exchange transactions	Gains (Losses) on fees from assets in trading accounts	Other noninterest income + extraordinary items	Gains (Losses) on assets not in trading accounts	Total noninterest income and gains (losses) on assets not in trading accounts
All national banks	$5,921	$1,171	$809	$19,139	$950	$27,991
Alabama	64	3	7	109	5	189
Alaska	14	0	0	27	1	42
Arizona	95	2	4	240	36	378
Arkansas	41	0	6	74	3	124
California	995	225	140	2,149	21	3,530
Colorado	104	3	7	283	7	403
Connecticut	68	3	0	171	47	289
Delaware	4	0	0	1,262	0	1,266
District of Columbia	45	7	2	143	13	210
Florida	371	6	1	582	107	1,067
Georgia	190	2	9	345	22	567
Hawaii	1	0	0	1	0	2
Idaho	30	0	0	36	1	68
Illinois	246	88	38	848	30	1,250
Indiana	94	1	3	226	2	326
Iowa	35	0	0	126	2	163
Kansas	44	0	1	72	3	120
Kentucky	44	0	0	91	2	138
Louisiana	93	0	2	105	14	215
Maine	6	0	0	14	1	21
Maryland	108	2	2	199	-19	288
Massachusetts	100	25	34	597	50	806
Michigan	156	10	9	376	4	555
Minnesota	115	8	12	337	5	478
Mississippi	37	0	1	44	1	83
Missouri	106	4	27	236	2	375
Montana	12	0	0	23	0	35
Nebraska	32	0	1	193	3	230
Nevada	28	0	0	239	0	267
New Hampshire	5	0	0	11	0	15
New Jersey	210	3	5	312	49	579
New Mexico	26	0	0	39	1	67
New York	428	700	337	3,727	49	5,242
North Carolina	167	19	24	365	90	666
North Dakota	8	0	0	17	2	28
Ohio	237	8	4	878	39	1,166
Oklahoma	54	1	4	77	3	138
Oregon	96	1	8	181	10	297
Pennsylvania	285	19	16	900	120	1,341
Rhode Island	15	2	0	177	10	204
South Carolina	74	1	3	134	19	230
South Dakota	11	0	0	1,167	3	1,180
Tennessee	107	1	69	154	5	336
Texas	540	13	20	1,062	150	1,785
Utah	34	0	2	58	2	96
Vermont	6	0	0	13	0	19
Virginia	[illegible]	1	[illegible]	196	[illegible]	304
Washington	[illegible]	11	[illegible]	301	6	501
West Virginia	18	0	0	37	[illegible]	57
Wisconsin	61	2	1	176	1	239
[illegible]	6	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

Interest expense of national banks, September 30, 1991
(Dollar amounts in millions)

	Interest on deposits	Expense of federal funds transactions	Interest on treasury demand notes and other borrowed money	Interest on mortgage and capitalized leases	Interest on subordinated notes and debentures	Total interest expense
All national banks	$61,544	$6,807	$5,720	$90	$1,003	$75,164
Alabama	565	84	3	0	0	[illegible]
Alaska	75	18	1	0	0	94
Arizona	534	13	39	0	1	[illegible]
Arkansas	387	9	2	1	0	399
California	6,908	578	807	14	223	8,531
Colorado	561	60	2	2	2	627
Connecticut	525	61	33	1	3	624
Delaware	418	91	243	0	16	769
District of Columbia	568	41	7	0	3	618
Florida	2,723	334	35	3	13	3,108
Georgia	1,121	235	18	1	6	1,381
Hawaii	9	0	0	0	0	9
Idaho	211	44	7	0	0	263
Illinois	3,749	427	259	1	66	4,503
Indiana	1,002	136	26	1	0	1,165
Iowa	398	41	3	1	1	444
Kansas	492	24	2	0	0	518
Kentucky	533	71	11	1	0	615
Louisiana	708	70	2	1	1	782
Maine	96	5	4	0	0	105
Maryland	908	101	143	1	11	1,163
Massachusetts	1,944	196	246	1	19	2,406
Michigan	1,690	169	96	1	5	1,961
Minnesota	1,084	164	40	2	20	1,310
Mississippi	344	32	1	0	0	377
Missouri	961	127	33	5	0	1,127
Montana	120	8	1	0	1	130
Nebraska	400	26	1	2	0	430
Nevada	186	42	80	0	0	309
New Hampshire	50	4	2	0	0	57
New Jersey	2,217	112	36	1	18	2,384
New Mexico	254	17	2	0	0	272
New York	12,511	799	2,688	22	426	16,447
North Carolina	1,448	647	156	4	19	2,275
North Dakota	121	2	0	0	1	124
Ohio	2,614	397	106	3	18	3,138
Oklahoma	437	12	7	0	0	457
Oregon	438	52	57	1	1	548
Pennsylvania	3,351	378	186	3	63	3,982
Rhode Island	278	82	28	0	5	394
South Carolina	556	175	11	1	3	746
South Dakota	370	53	104	0	3	530
Tennessee	805	88	13	1	7	913
Texas	3,709	415	117	6	25	[illegible]
Utah	219	38	9	0	1	[illegible]
Vermont	94	2	1	0	0	97
Virginia	945	121	20	1	[illegible]	[illegible]
Washington	908	106	25	4	16	[illegible]
West Virginia	336	27	1	0	[illegible]	[illegible]
Wisconson	593	72	6	1	[illegible]	[illegible]
Wyoming	67	1	0	0	[illegible]	[illegible]
Puerto Rico	3	0	0	0	[illegible]	[illegible]

*Zeros indicate amounts of less than $500,000

Noninterest and other expense of national banks, September 30, 1991
(Dollar amounts in millions)

	Provision for loan and lease losses	*Provision for allocated transfer risk*	*Salaries and employee benefits*	*Expenses of premises and fixed assets*	*Applicable income taxes*	*Other noninterest expense*	*Total noninterest and other expense*
All national banks	$15,292	$26	$23,172	$7,865	$3,574	$23,460	$73,388
Alabama	51	0	202	64	53	165	535
Alaska	1	0	51	17	19	28	117
Arizona	109	0	313	91	25	310	849
Arkansas	22	0	134	39	38	126	359
California	2,829	0	2,948	1,181	547	2,601	10,105
Colorado	119	0	290	98	38	398	942
Connecticut	275	0	224	99	-19	261	841
Delaware	361	0	228	60	282	615	1,545
District of Columbia	390	0	157	68	-98	331	848
Florida	706	-1	919	400	90	1,175	3,289
Georgia	250	0	472	145	90	566	1,524
Hawaii	0	0	6	3	1	4	13
Idaho	19	0	67	15	31	93	225
Illinois	589	25	1,171	379	163	954	3,282
Indiana	169	0	354	109	96	338	1,066
Iowa	42	0	140	48	42	140	412
Kansas	46	0	144	38	38	160	427
Kentucky	103	0	178	54	17	144	496
Louisiana	239	0	264	82	23	287	895
Maine	42	0	28	11	-3	32	110
Maryland	364	2	382	110	-43	337	1,153
Massachusetts	359	0	597	214	27	614	1,812
Michigan	166	0	648	181	129	503	1,627
Minnesota	166	0	344	108	84	533	1,235
Mississippi	39	0	109	33	19	93	294
Missouri	93	0	352	105	92	319	961
Montana	5	0	42	13	12	52	123
Nebraska	53	0	141	49	53	211	507
Nevada	277	0	96	37	34	403	848
New Hampshire	24	0	18	5	1	32	80
New Jersey	828	0	747	269	76	801	2,720
New Mexico	43	0	92	31	3	76	244
New York	2,879	0	4,830	1,640	320	3,406	13,076
North Carolina	368	0	511	158	86	527	1,650
North Dakota	4	0	36	10	8	33	90
Ohio	602	0	919	266	269	1,193	3,249
Oklahoma	22	0	170	46	27	154	420
Oregon	254	0	257	58	30	177	776
Pennsylvania	574	0	1,042	403	156	1,177	3,352
Rhode Island	114	0	130	23	11	189	468
South Carolina	168	0	217	76	45	191	697
South Dakota	355	0	137	37	191	829	1,549
Tennessee	142	0	335	89	48	307	921
Texas	379	0	1,468	519	142	1,416	3,924
Utah	34	0	76	20	29	107	267
Vermont	35	0	31	10	-4	26	97
Virginia	343	0	313	100	-8	301	1,049
Washington	126	0	474	151	151	372	1,274
West Virginia	23	0	108	29	34	93	286
Wisconsin	86	0	237	67	69	235	695
Wyoming	2	0	22	6	8	23	61
Puerto Rico	0	0	1	1	0	1	3

Zero indicates amounts of less than $500,000

*Book value of securities at national banks, September 30, 1991**
(Dollar amounts in millions)

	U S treasury securities	*U S government issued or guaranteed certificates of participation*	*Other U.S government agency and corporation obligations*	*Securities issued by states and political subdivisions in the U S*	*Other domestic debt securities*	*Foreign debt securities*	*Equity securities*
All national banks	$92,939	$93,446	$74,914	$36,120	$25,942	$12 342	$5 569
Alabama	553	1,216	1,750	953	436	14	33
Alaska	830	24	301	139	264	0	6
Arizona	1,280	131	1,709	53	438	1	25
Arkansas	1,499	560	1,382	488	256	1	27
California	3,581	7,016	1,325	953	512	1 137	362
Colorado	1,561	1,493	1,531	463	176	0	44
Connecticut	3,246	2,530	62	32	365	6	38
Delaware	718	64	14	7	269	0	27
District of Columbia	829	658	721	157	184	64	22
Florida	5,963	4,490	4,942	2,374	1,086	181	254
Georgia	1,008	3,510	1,205	1,064	717	7	289
Hawaii	6	1	32	2	0	0	0
Idaho	347	184	472	246	188	0	8
Illinois	5,366	3,419	4,237	3,346	2,498	331	484
Indiana	1,386	1,395	1,656	1,038	782	6	82
Iowa	951	2,000	686	391	196	0	48
Kansas	1,111	1,179	1,824	679	109	0	189
Kentucky	1,007	500	955	828	243	1	39
Louisiana	2,632	2,616	1,238	273	361	3	34
Maine	175	52	58	22	32	0	3
Maryland	1,126	1,745	1,465	591	453	48	40
Massachusetts	3,229	3,824	699	60	206	340	179
Michigan	1,312	5,677	1,245	2,030	1,321	46	214
Minnesota	1,398	4,492	776	778	675	5	111
Mississippi	752	715	1,195	546	301	1	23
Missouri	4,110	1,331	1,452	886	280	38	33
Montana	183	398	162	47	29	0	12
Nebraska	1,280	591	633	388	153	2	16
Nevada	119	338	153	50	335	0	9
New Hampshire	134	77	106	39	48	0	6
New Jersey	3,563	2,438	4,123	1,270	1,123	55	132
New Mexico	911	355	459	256	33	0	27
New York	7,096	8,327	2,883	2,679	1,937	9,376	1,265
North Carolina	5,861	1,855	542	1,432	213	206	44
North Dakota	184	506	136	82	21	0	7
Ohio	2,713	2,733	5,483	2,990	2,045	28	146
Oklahoma	2,442	1,350	1,216	463	280	1	59
Oregon	448	706	364	321	146	1	16
Pennsylvania	4,606	7,734	8,188	2,341	2,387	345	303
Rhode Island	205	1,105	54	28	86	2	15
South Carolina	1,659	696	1,171	500	282	13	24
South Dakota	117	543	59	93	30	0	22
Tennessee	1,626	1,203	2,757	797	508	5	38
Texas	9,903	8,502	8,660	1,053	2,751	66	338
Utah	237	234	697	123	113	0	101
Vermont	124	78	84	40	30	0	10
Virginia	821	1,133	1,215	613	439	1	57
Washington	634	467	331	357	181	[illegible]	58
West Virginia	767	422	1,576	596	78	0	105
Wisconson	971	571	694	1,116	291	0	142
Wyoming	359	259	238	47	56	0	[illegible]
Puerto Rico	0	0	0	1	2	0	[illegible]

Zeros indicate amounts of less than $500,000
*Excludes assets held in trading accounts

Off balance sheet items at national banks, September 30, 1991
(Dollar amounts in millions)

	Unused commitments	Letters of credit	Participations in acceptances acquired by the reporting bank	Securities borrowed	Securities lent	Mortgages transferred with recourse treated as sold	Interest rate contracts and when issued securities
All national banks	$728,363	$139,140	$150	$3,586	$9,326	$15,880	$1,926,998
Alabama	[illegible]	757	0	44	85	14	1,478
Alaska	454	25	0	9	43	0	23
Arizona	16,783	276	0	0	0	37	2,924
Arkansas	801	74	0	0	0	187	230
California	103,913	23,797	5	26	1,951	227	384,106
Colorado	5,759	471	2	1	0	0	119
Connecticut	4,389	1,006	0	0	0	11	1,496
Delaware	79,054	9	0	0	0	0	5,297
District of Columbia	2,430	550	0	0	0	0	2,835
Florida	15,335	2,576	0	1	316	484	4,488
Georgia	14,438	2,303	17	340	0	84	8,862
Hawaii	76	2	0	0	0	0	0
Idaho	1,898	123	0	15	15	0	4,064
Illinois	57,985	11,102	23	20	97	7	318,524
Indiana	8,854	926	0	87	1,047	19	2,229
Iowa	6,346	193	0	0	1	0	338
Kansas	2,459	134	0	9	9	27	4
Kentucky	2,760	447	0	22	45	4	491
Louisiana	3,120	429	2	0	0	105	453
Maine	338	23	0	0	0	0	106
Maryland	10,747	1,135	0	0	73	133	11,173
Massachusetts	17,051	3,585	0	27	27	233	40,522
Michigan	13,647	2,269	1	0	15	349	5,563
Minnesota	10,248	3,108	0	5	95	76	19,138
Mississippi	1,535	110	0	0	0	14	127
Missouri	6,425	1,204	0	174	89	1	2,304
Montana	791	65	0	16	0	8	185
Nebraska	5,706	158	0	11	0	0	115
Nevada	919	63	0	0	0	1	5,316
New Hampshire	274	17	0	0	0	0	70
New Jersey	13,047	1,396	3	0	0	1	6,272
New Mexico	1,016	40	0	0	5	43	237
New York	93,235	53,708	28	719	859	11,582	951,154
North Carolina	18,378	3,764	14	11	0	86	16,766
North Dakota	292	17	0	2	0	0	90
Ohio	37,618	3,896	5	0	0	347	27,045
Oklahoma	1,919	167	0	0	0	40	65
Oregon	3,507	495	5	0	0	13	2,832
Pennsylvania	39,704	9,243	22	0	912	193	35,989
Rhode Island	4,382	417	10	0	0	0	1,364
South Carolina	4,598	283	5	33	307	11	438
South Dakota	51,599	40	0	0	1	0	6,088
Tennessee	6,627	749	0	0	422	57	2,632
Texas	[illegible]	3,902	[illegible]	1,982	2,725	761	15,093
Utah	[illegible]	237	[illegible]	0	0	0	3,359
Vermont	335	28	[illegible]	0	0	4	56
Virginia	[illegible]	1,207	1	20	57	631	3,071
Washington	14,692	1,714	[illegible]	0	74	0	28,781
West Virginia	1,761	103	[illegible]	0	49	0	5
Wisconsin	[illegible]	698	[illegible]	6	0	91	3,081
Wyoming	[illegible]	16	[illegible]	7	7	[illegible]	[illegible]
[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]	[illegible]

[illegible]

Outstanding balances, credit cards and related plans of national banks. September 30, 1991
(Dollar amounts in thousands)

	Total number of national banks	Credit cards and other related credit plans: Number of national banks	Credit cards and other related credit plans: Outstanding volume
All national banks	3,865	2,318	$75,521,377
Alabama	52	27	350,187
Alaska	4	3	48,253
Arizona	14	13	1,941,869
Arkansas	80	23	140,018
California	158	147	12,272,606
Colorado	248	225	1,177,611
Connecticut	16	10	75,071
Delaware	14	13	11,478,658
District of Columbia	22	21	175,056
Florida	162	84	1,963,075
Georgia	74	53	1,887,828
Hawaii	3	1	3,525
Idaho	7	7	215,652
Illinois	334	192	971,123
Indiana	83	75	1,008,590
Iowa	100	57	394,450
Kansas	163	50	349,717
Kentucky	84	36	178,056
Louisiana	45	19	469,300
Maine	6	6	45,368
Maryland	29	22	4,088,806
Massachusetts	28	20	168,012
Michigan	63	49	595,273
Minnesota	151	109	740,662
Mississippi	26	13	113,567
Missouri	87	58	422,734
Montana	42	28	308,286
Nebraska	109	47	1,416,885
Nevada	7	5	3,492,037
New Hampshire	9	5	293,443
New Jersey	51	43	1,398,065
New Mexico	38	20	191,954
New York	90	64	5,095,417
North Carolina	15	15	548,196
North Dakota	30	23	78,492
Ohio	131	106	5,141,871
Oklahoma	162	61	72,101
Oregon	8	6	1,303,013
Pennsylvania	152	94	815,802
Rhode Island	3	2	139,821
South Carolina	30	28	706,113
South Dakota	21	14	6,967,505
Tennessee	45	23	674,003
Texas	581	201	937,736
Utah	6	5	218,312
Vermont	12	5	43,647
Virginia	46	23	1,718,513
Washington	27	22	1,834,878
West Virginia	72	28	106,634
Wisconsin	95	89	731,130
Wyoming	29	27	[illegible]
Puerto Rico	1	1	40

Consolidated foreign and domestic loans and leases past due at national banks, by states, September 30, 1991
(Dollar amounts in millions)

	Number of banks	All real estate	Commercial and industrial	Personal	Leases	Other loans[3]	Total loans	To non-U.S. addresses
		Type of loan						
All national banks	3,865	$14,199.7	$6,331.0	$8,309.5	$403.3	$1,215.9	$30,459.4	$902.70
Alabama	52	97.3	46.4	56.3	0.4	5.3	205.6	0.00
Alaska	4	21.8	10.2	3.6	0.1	4.1	39.7	0.00
Arizona	14	106.5	51.3	107.4	0.5	12.4	278.2	0.83
Arkansas	80	75.5	37.8	30.1	0.1	1.6	145.1	0.00
California	158	3,166.2	896.4	849.8	37.4	273.6	5,223.5	110.53
Colorado	248	94.7	67.5	53.6	0.4	12.5	228.6	0.00
Connecticut	16	365.6	200.2	75.5	0.0	18.6	659.9	0.00
Delaware	14	12.9	6.9	462.1	1.0	1.0	483.9	0.00
District of Columbia	22	206.7	191.2	25.9	4.3	13.7	441.8	5.82
Florida	162	785.7	227.4	218.3	3.7	13.4	1,248.5	3.57
Georgia	74	186.5	156.2	163.4	17.3	15.4	538.9	0.00
Hawaii	3	0.5	0.5	0.2	0.0	0.0	1.1	0.00
Idaho	7	19.1	11.2	24.8	0.1	5.0	60.3	0.00
Illinois	334	547.7	353.9	171.6	0.5	50.7	1,124.5	1.99
Indiana	83	180.4	91.2	184.7	8.8	1.4	466.6	0.00
Iowa	100	25.5	36.0	45.0	0.0	2.2	108.7	0.00
Kansas	163	41.2	63.5	29.1	1.3	0.7	135.9	0.00
Kentucky	84	102.5	55.2	56.9	1.3	2.3	218.2	0.00
Louisiana	45	111.2	73.5	75.2	1.0	3.7	264.5	0.00
Maine	6	31.2	5.7	6.4	0.0	0.0	43.3	0.00
Maryland	29	159.8	43.9	291.5	3.5	6.3	505.0	3.85
Massachusetts	28	404.5	216.7	70.3	9.1	31.7	732.3	11.37
Michigan	63	288.1	105.9	135.0	6.6	9.0	544.6	0.00
Minnesota	151	174.6	200.0	97.5	10.0	132.3	614.3	0.00
Mississippi	26	42.3	28.8	28.9	0.1	5.9	106.0	0.00
Missouri	87	119.6	64.3	62.7	0.3	9.7	256.5	0.00
Montana	42	11.9	14.8	20.1	0.1	2.9	49.8	0.00
Nebraska	109	25.4	32.4	71.4	0.2	7.2	136.7	0.00
Nevada	7	33.5	9.3	212.9	0.0	0.0	255.7	0.00
New Hampshire	9	16.2	9.6	13.2	0.0	0.0	39.0	0.00
New Jersey	51	1,126.3	483.8	309.4	13.5	66.9	1,999.9	0.03
New Mexico	38	48.3	30.7	18.9	0.4	4.6	102.9	0.00
New York	90	2,287.6	717.4	1,326.4	99.8	283.7	4,714.8	733.86
North Carolina	15	199.7	148.8	66.3	1.9	21.6	438.3	2.27
North Dakota	30	10.4	12.8	8.1	0.0	3.5	34.8	0.00
Ohio	131	471.7	251.8	618.2	19.0	16.7	1,377.4	0.00
Oklahoma	162	54.5	41.9	19.4	0.1	2.8	118.6	0.00
Oregon	8	70.3	32.8	44.0	22.0	34.7	203.8	0.00
Pennsylvania	152	604.7	298.8	368.3	72.9	27.1	1,371.8	17.46
Rhode Island	3	211.8	69.3	35.6	44.2	2.4	363.2	0.00
South Carolina	30	132.6	43.9	71.3	1.4	6.4	255.7	0.00
South Dakota	21	7.8	33.6	972.1	0.1	3.9	1,017.5	0.00
Tennessee	45	138.1	73.5	106.7	2.9	16.3	337.5	0.00
Texas	581	500.5	328.0	259.9	2.5	36.5	1,127.5	3.49
Utah	6	65.1	25.5	23.2	0.5	3.3	117.6	0.00
Vermont	12	39.1	27.3	10.0	0.0	0.0	76.3	0.00
Virginia	46	240.6	77.1	173.6	2.2	7.7	501.3	0.00
Washington	27	320.5	162.2	109.6	2.2	25.0	619.5	7.65
West Virginia	[illegible]	63.7	34.6	56.7	0.0	0.3	155.4	0.00
Wisconsin	95	147.1	110.3	62.8	9.6	9.8	339.6	0.00
Wyoming	29	3.9	17.3	5.1	0.0	0.1	26.4	0.00
[illegible]	1	1.3	1.9	0.5	0.0	0.0	2.7	0.00

[1] [illegible] $300 [illegible] category captures commercial (time and demand) and all other loans
[2] [illegible] $300 [illegible] category captures installment loans and credit cards and related plans
[illegible] $300 [illegible]
[illegible]

Percent of loans past due, by asset size of national banks[1]

	Less than $300M	*$300M to $1B*	*$1B to $10B*	*Greater than $10B*	*All national banks*
Real estate					
December 1990	2.55	2.61	3.37	[illegible]	[illegible]
March 1991	2.66	2.88	3.47	[illegible]	[illegible]
June 1991	2.30	2.35	2.85	2.94	[illegible]
September 1991	2.27	2.34	2.98	3.03	[illegible]
Commercial and industrial[2]					
December 1990	4.55	2.73	2.17	1.56	[illegible]
March 1991	4.99	2.80	2.08	1.35	1.92
June 1991	4.48	2.64	2.15	1.07	1.72
September 1991	4.49	2.83	2.19	1.16	1.77
Personal[3]					
December 1990	3.11	3.25	3.99	4.28	3.92
March 1991	2.81	2.88	4.42	3.58	3.78
June 1991	2.78	2.69	4.29	3.35	3.61
September 1991	2.80	2.88	4.12	3.51	3.61
Leases					
December 1990	2.49	1.81	2.31	1.43	1.73
March 1991	2.95	1.39	2.31	1.47	1.75
June 1991	2.57	1.35	1.95	1.28	1.51
September 1991	1.85	1.28	2.25	1.26	1.58
Other loans					
December 1990	0.01	0.69	1.28	0.80	0.85
March 1991	0.06	0.90	1.75	0.61	0.86
June 1991	0.05	0.59	1.17	0.82	0.83
September 1991	0.04	0.54	1.20	1.06	0.97
Total loans					
December 1990	2.89	2.66	2.99	2.66	2.78
March 1991	2.98	2.72	3.18	2.51	2.79
June 1991	2.65	2.37	2.89	2.04	2.40
September 1991	2.62	2.43	2.92	2.16	2.46

[1]Past due loans in each category are stated as a percentage of loans outstanding of that type

[2]For banks with assets of less than $300 million, this category captures commercial (time and demand) and all other loans

[3]For banks with assets of less than $300 million, this category captures installment loans and credit cards and related plans

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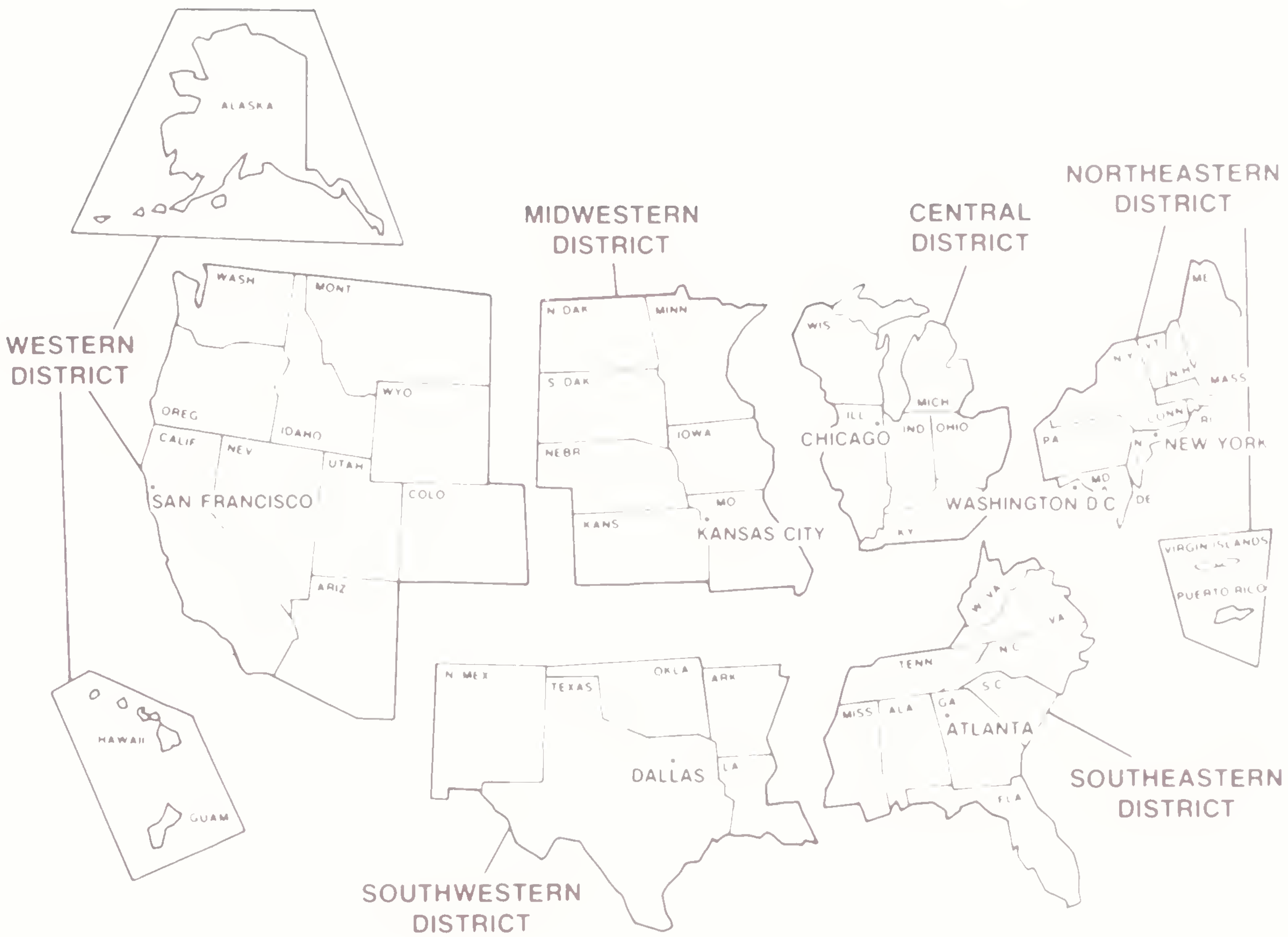

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